

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JOHN DAVID BATTAGLIA,
Petitioner

v.

Cause No. 3-09-CV-1904-B-BD
(Texas Death-Penalty Case)

RICK THALER, Director
Correctional Institution Division,
Texas Department Criminal Justice,
Respondent

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED

SEP 20 2011
CLERK, U.S. DISTRICT COURT
By [Signature] SGM
Deputy

PRO SE SUPPLEMENTAL REPLY

Respondent filed an ANSWER to the petitioner's original filed BRIEF FOR PETITIONER and PRO SE SUPPLEMENTAL APPLICATION FOR WRIT OF HABEAS CORPUS. Respondent's answer claims that petitioner should be denied relief because he fails to demonstrate that he is entitled to federal habeas relief. However, respondent's answer should be denied because his arguements and defenses fail to prove that the petitioner should be denied federal habeas relief.

PETITIONER'S PRO SE SUPPLEMENTAL CLAIMS

In BRIEF FOR PETITIONER Docket Entry (DE) 27 appointed counsel raised eight issues for relief of which she argued five in her REPLY DE73 filed on August 19, 2011. Therefore, the petitioner will REPLY and traverse his three CLAIMS raised in his PRO SE SUPPLEMENTAL APPLICATION FOR WRIT OF HABEAS CORPUS DE62 which are:

- #9 Petitioner was deprived of rights to a speedy and public trial, and an impartial jury and due process of law under the Sixth and Fourteenth Amendments of the United States Constitution because the trial court judge was biase or corrupt, or both, because:
 - 1) the judge had a conflict of interest with appointed defense counsel; and 2) the judge had a conflict of interest with the prosecution and Dallas District Attorneys Office.
- 10 The forcible administration of an antipsychotic medication during the course of voir dire and trial violated petitioner's rights to a fair trial as guaranteed by the Due Process Clause of the Sixth & Fourteenth Amendments of the U.S. Constitution.
- 11 Trial counsel failed to provide effective assistance of counsel at both phases of petitioner's trial due to an actual conflict of interest which the trial court failed to inquire into for which it knew or reasonably should have known in violation of the Sixth & Fourteenth Amendments to the U.S. Constitution.

RESPONDENT'S DEFENSES

The respondent does not argue the grounds of the petitioner's three pro se supplemental claims, but instead raise the defenses that the claims for relief fail because they are time-barred under 28 U.S.C. §2244(d) and are procedurally defaulted.

STANDARD OF REVIEW

Petitioner's pro se claims were FAIRLY PRESENTED to both the trial court and Court of Criminal Appeals (CCA). And both state courts refused to rule on the merits of the claims. The claims raised issues that highlighted the "extreme malfunction in the state criminal justice system," per Harrington v Richter, 131 S.Ct. 770 (2011) cited in respondent's answer DE66 (page 20), reflecting the view that Section 2254(d) is a "guard against" these extreme malfunctions in the state criminal justice system which is evident from the petitioner being blocked at every avenue to present his claims before the state courts. Because of these state impediments blocking petitioner's access to the courts, these courts were not making the "ultimate decision" on petitioner's claims, but sat blindly looking and his FAIRLY PRESENTED claims and ignored them.

Per Catalan v Cockrell, 312 F3d 491 (5th Cir 2002) ("...we review only the state court's decision, not its reasoning or written opinion.") And in this instant case the petitioner's fairly presented claims were not ruled on in any state court's decision, therefore the standard raised by the respondent is not a bar to the petitioner, but his only avenue to a court in which to present his prior fairly presented claims. Per the Great Writs intended purpose.

Petitioner could not fully develop the factual basis for his claims in the state courts per 28 U.S.C. §2254(e)(2) because the state courts chose to ignore the fairly presented claims which attacked the "extreme malfunction in the state criminal justice system." The claims presented constitutional violations of such a magnitude that they presented, "a convincing claim of actual innocence that can only be established by newly discovered evidence." William v Taylor, 529 U.S. 420 (2000). But petitioner cannot discover new evidence if he is first deprived of his liberty and property,

and second blocked for over nine years from attaining access to his own record, trial record, non-conflicted legal counsel, and access to the state courts.

For these exact reasons the Great Writ was established to provide the petitioner with an avenue for a fair hearing in which to attack the INTEGRITY of his state court conviction and sentence of death which is based on the violations of his Constitutional Rights due to the extremely malfunctioning Texas criminal justice system. Therefore, it is within this Court's discretion to grant the petitioner a hearing as is warranted by his meritorious claims.

ARGUMENT

PRO SE CLAIMS ARE NOT TIME-BARRED OR PROCEDURALLY DEFALTED
Respondent's answer DE66 (page 128) states, "A. Battaglia's pro se allegations are subject to dismissal under 28 U.S.C. §2244(d)." And "Battaglia concedes that he is raising new claims in his supplemental petition, and not merely reasserting the allegations raised in his initial petition." This statement is false in that petitioner has conceded on such thing.

Petitioner Motioned To Amend Federal Petition...DE39, and in ORDER DE44, the Court stated, "To address these concerns, the court determined that petitioner should be allowed to represent himself for the limited purpose of filing a supplemental application for writ of habeas corpus raising any additional claims he deems appropriate. Accordingly, petitioner's motions for self-representation [Doc.#38] and to amend the writ filed by appointed counsel [Doc.#39] are granted in part."

Nowhere did the petitioner request to raise "new claims" or did the court grant permission to raise "new claims" as the respondent is trying to allege as a defense against petitioner's claims. In Hernandez v Thaler, 630 F3d 420(5th Cir 2011), the Fifth Circuit states, "Pro se petitions are not held to the same stringent and rigorous standards as are pleadings filed by lawyers, and the filings of a pro se habeas petitioner are entitled to the benefit of liberal construction; it is the substance of the relief sought, not the labels attached to it, that determines the true nature and

operating effect of a habeas filing."

In his pro se writ DE62 petitioner had referred (page 2 of 30) to the "relation-back" effect of Fed.R.Civ.P., Rule 15, Amended and Supplemental Pleadings, Rule 15(c)(1) and Rule 15(d), to incorporate the pro se petition and claims into the original and pending writ DE27 which respondent acknowledges was timely filed on September 22, 2010. In 28 USC §2241 APPLICATION, ¶3, "It may be amended or supplemented as provided in the rules of procedure applicable to civil actions." Rule 15(a)(1), "Amending as a matter of course. A party may amend its pleading once as a matter of course within:... (2) Other Amendments. In all other cases, a party may amend its pleading only with opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." Rule 15(c)(1), "When an Amendment Relates Back [to the date of the original pleading]." Rule 15(d) Supplemental pleadings states, "... The court may permit supplementation even though the original pleading is defective in stating a claim or defense. The court may order that the opposing party plead to the supplemental pleading within a specific time." This is what the petitioner believes the Court intended in its ORDER DE44 and not the respondent's construction of a "new claim" (as did appointed counsel, oddly enough), which would mean one "that happened after the date of the pleading to be supplemented." Which is not what the petitioner intended or what he has presented in his pro se claims.

See *In re Coastal plains Inc.*, 179 F3d 197 (5th Cir. 1999) (An amendment to a complaint will relate back to the date of the original complaint if the claim asserted in the amended pleading arises out of conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading. FRCP Rule 15(c)), see *McClellon v Lone Stor Gas Co.*, 66 F3d 98 (5th Cir. 1995) (Amendments that correct deficiencies in pleading or serve to expand facts alleged in original pleading satisfy relation-back requirements. FRCP Rule 15(c)), see *McClellon*, Id. (Amended complaint filed to cure pleading deficiency relate back to filing date of original, albeit deficient complaint, where amended complaint properly pleads what party

attempted to set forth in original complaint.FRPC Rule 8,15), and see U.S. v GONZALEZ,~~§92~~ F3d 765(5th Cir 2009)(Civil procedure rule governing amendment of pleading applies to federal habeas proceedings.FRPC Rule 15,USCA.)

Just because petitioner's appointed counsel refused to present the previously "fairly presented" claims and attempted to "sandbag" the petitioner's writ DE27, in the exact same manner as the appointed state counsels had, does not mean that the petitioner cannot try to overcome this intentional "sabotaging" of his original file federal habeas petition. In appointed counsel's Ex parte motions for funds DE12 (have only seen ORDER DE16) and Ex parte reply DE43, she had acknowledged the possibility of petitioner's claim of being forcibly medicated with an anti-psychotic, but chose not to investigate or present the issue because it was not stated on the prior state writ and is currently attempting to mislead the Court as to protect her reputation at the expense of the petitioner's interests in this case and of his life.

Respondent then states,"Therefore, Battaglia was required to present all claims to this Court by September 23, 2010!"(page 129) Which in fact the petitioner had done prior to the September 23, 2010 date through the filing of his NOTICES and MOTIONS with the Court. The Notices and Motions (specifically document #'s 2,3,14,24 & 26 filed prior to 9/23/10) "fairly presented" all of the petitioner's claims that were deliberately and erroneously omitted from the original writ DE27 filed by appointed counsel.(see Motion To Amend DE39)

On April 15, 2010 petitioner filed NOTICE OF CONFLICT OF INTEREST WITH APPOINTED COUNSEL DE14 asking for new or substitute counsel and attached as EXHIBITS a number of his previously filed state court filings, with both the trial court and CCA, setting out his claims for the state courts. Petitioner is unable to obtain copies of the Court's records/docket for cross referencing to his REPLY the Document/PageID#s of his prior submissions and will, therefor, attach as EXHIBITS 1 through 19 to this REPLY copies obtained from his web-site/file archives which should match his prior submission. The following is a brief explanation of each attached EXHIBITS.

EXHIBIT EXPLAINATIONS

1. Proof of petitioner's status as a federal relator & expert and basis of his protected witness status and IRS-CID contacts.
2. First state court filing of ineffective and conflicted appointed appeal counsel and request for new counsel.
3. Court Denial of request of new counsel; proof of filing.
4. NOTICE TO CCA (and trial court) of conflict of interest and counsel's Confrontation Clause Violations; FAIRLY PRESENTED.
5. NOTICE to attorney listed on state writ of conflict of interest and being drugged by court & counsel; to document non-action.
6. NOTICE TO DALLAS D.A. (and state courts) of criminal conspiracy involving State's witnesses and false prosecutions used at trial.
7. NOTICE TO MEDIA of criminal conspiracy with US Attorney, D.A., and trial witnesses; FAIRLY PRESENTED to state & US Supreme Courts.
8. NOTICE TO STATE BAR (and state courts) of perjuring attorney witness, Confrontation & BRADY Violations; FAIRLY PRESENTED.
9. NOTICE TO US ATTORNEY GENERAL & transmittal of filings to LAW ENFORCEMENT; FAIRLY PRESENTED to state and U.S. Supreme Courts.
10. NOTICE TO ATTORNEY GENERAL TEXAS, transmit State Bar Notice of perjured lawyer witness to LAW ENFORCEMENT; FAIRLY PRESENTED.
11. NOTICE TO TRIAL COURT JUDGE WARDER raising pro se claims barred by appeal counsel; FAIRLY PRESENTED to CCA and US Supreme Court.
12. NOTICE TO U.S. SUPREME COURT with EXHIBITS 9 & 11 to document ineffective & conflicted counsel; FAIRLY PRESENTED TO FEDERAL.
13. PRO SE ANSWER/REPLY TO STATE'S ANSWER to present pro se claims and rebut and document TAMPERED TRIAL RECORD and RIGGING OF JURY by judge, D.A., appointed counsel, and court reporter; FAIR PRESENT.
14. DOCUMENTATION OF FILING PRO SE ANSWER/REPLY WITH CCA and claim of conflict of interest of counsel; FAIRLY PRESENTED TO CCA.
15. DOCUMENTATION OF RECEIPT OF EXHIBITS SUBMITTED TO US A.G., EX. 9.
16. NOTICE TO CCA JUDGE FOR FAIR PRESENTATION OF CLAIMS OF CONFLICT OF INTEREST, CONSPIRACY, BRADY, & ACTUAL INNOCENCE THEORY.
17. NOTICE MEDIA TO DOCUMENT COUNSEL'S CONFLICT OF INTEREST and VIOLATION OF ATTORNEY-CLIENT PRIVILEGE; FAIRLY PRESENTED to courts.
18. DOCUMENT CLAIM OF ACTUAL INNOCENCE & ALT. THEORY, FAIR PRESENT.
19. NOTICE TO TRIAL COURT OF CONFLICTED COUNSEL; FAIRLY PRESENTED.

The EXHIBITS document filings with state courts, the U.S. Supreme Court, Attorney General of Texas, U.S. Attorney General, and the F.B.I. (not mentioned by counsel in DE43.) Therefore, petitioner's claims were previously submitted and "FAIRLY PRESENTED" to the state courts prior to their being submitted to this Court. See Anderson v Johnson, 338 F3d 382 (5th Cir 2003) (Exhaustion requires only that the federal claim has been fairly presented to the state's highest court before a habeas petitioner pursues federal relief, either via direct appeal or state post-conviction proceeding. § 2254 (b)(1)), (Federal habeas court reviews on a state court's decision, and not the written opinion explaining the decision.), (Requirement that federal habeas petition fully exhaust remedies...is not jurisdictional, but reflects a policy of federal-state comity designed to give the state an initial opportunity to pass upon and correct alleged violation of its prisoner's federal rights. § 2254) and (Although exhaustion inquiries are fact-specific, as a general rule dismissal of federal habeas petition is not required when evidence presented for the first time in a habeas proceeding supplements, but does not fundamentally alter, the claim presented to the state courts. § 2254) In U.S. v Gonzales, 592 F3d 675 (5th Cir 2009) (footnote 3. "An argument could be made that these documents were sufficient to put court on notice of his claim within AEDPA's one-year period.") Which again is what the petitioner is also claiming in this REPLY. In Coleman v Dretke, 395 F3d 216 (5th Cir 2004) [9] "... The state argues that Coleman did not exhaust his state remedies, because he never properly presented two of his claims to the state court. A prisoner fairly presents a claim to the state court when she asserts the claim "in terms so particular as to call to mind a specific right protected by the Constitution" or alleges "a pattern of facts that is well within the mainstream of constitutional litigation." And at [10] "We conclude that Coleman's REPLY adequately presented his claims to the state court,...The state court's failure to expressly rule on those claims does not prevent the claim from being exhausted. Ridgway v Baker, 720 F2d 1409 (5th Cir 1983). Coleman successfully exhausted his state remedies and has not defaulted any claims," Petitioner's claims are not defaulted either.

In addition respondent states that the limitation period was not tolled while petition was pending per *Duncan v Walker*, 121 S.Ct. 2120 (2001). Which is incorrect in this case. DUNCAN deals with a 1st & 2nd federal petition that did not return to state court to exhaust and is not applicable to petitioner's amended/supplemented pleading which is not a second or successive petitioner per Rules Governing §2254 Cases, Rule 9. Also DUNCAN resolves a conflict in terms between the Courts of Appeals, and per both Justice Souter's (concurring) and Justice Stevens' (concurring) opinions; "...that nothing bars a district court from retaining jurisdiction pending complete exhaustion of state remedies, and that a claim for equitable tolling could present a serious issue of facts different from those before us." And Justice Steven', "I write separately to add two observations regarding the equitable powers of the federal courts, which are unaffected by today's decision construing a single provision of the AEDPA....federal courts may well conclude the Congress simply overlooked the class of petitions whose timely filed habeas petitions remain pending in district court past the limitation period,... Today's ruling does not preclude that possibility, given the limited issue presented in this case and the Court's corresponding limited holding."

Therefore, petitioner's pro se writ and claims are not new claims and are not untimely claims, either. Petitioner attempted to address the time-bar issue in his pro se writ as stated above, maybe not in a very lawyerly manner, but clear enough to relate his amended petition and claims back to his original and timely filed federal habeas petition. See *Daly v Sprague*, 742 F2d 896 (5th Cir 1984) (Two criteria are employed to determine appropriateness of new pleadings: timeliness of amendments with regard to progress of the case as a whole, and germaneness with regard to of subject matter of the amendment to subject matter of the suit.) Again, amended and supplemented petition and claims are not untimely and are not new claims as stated by respondent in his answer as a defense against petitioner's claims. See *Summit Office Park, Inc. v US Steel Corp.*, 639 F2d 1278 (5th Cir 1981) (The purpose of federal rule permitting amendments is to assist the disposition of litigation on the merits of the case

rather than having the pleading become ends in themselves.FRPC Rule 15(a)).

Then respondent states (page 130), "Battaglia does not address the time-bar issue in the instant petition. To the extent he might claim he is entitled to equitable tolling...Holland v Florida,130 S.Ct. 2549(2010)...Such circumstances do not exist in this case." This is somewhat correct and a bit confusing also; equitable tolling per HOLLAND does not exist in the instant case.

HOLLAND's facts are: a Florida state prisoner's lawyer failed to file a federal habeas petition before the AEDPA limitation period expired and then the prisoner filed a pro se writ five weeks late. Then federal courts held pro se petition untimely and lawyer's negligence did not amount to "extraordinary circumstances" warranting equitable tolling. Supreme Court reversed rejecting more rigid standard for those stated at page 130 of answer DE66. HOLLAND pertains to a prisoner missing the AEDPA deadline because of his attorney's gross negligence which is not the issue in the present case.

Petitioner's attorney filed a timely, but "unauthorized and false" petition DE27 and petitioner motioned to "Amend and make it right and correct" DE39. Petitioner's Motion To Amend DE39 also set out that the petitioner could amend the original timely filed writ per Nelson v Quarterman,215 Fed.Appx.396(5thCir2007) which states, "The district court was correct to conclude that Nelson knew about the impending deadline and could have filed a pro se skeletal petition before the limitation period expired. See Lookingbill v Cockrell,293 F3d 256,264,n13(5thCir2002)." In the instant case petitioner's questionable attorney filed a timely petition DE27 which is basically the same as a skeletal petition since she managed to leave all of the meat off of the bones (the basic structure of the petitioner's claims), then the pro se petitioner later came in on Motion DE39 and Court ORDER DE44 to flesh out his claims. LOOKINGBILL states,"Habeas petition is "pending" so as to toll limitation period, only after a petition for writ of habeas corpus itself is filed. 28 USCA§2244(d)(2)" and "Filing of federal habeas petition, not of a motion for appointment of counsel, tolls

limitations period under AEDPA for federal habeas petitions..." and "AEDPA's 1 year limitation period is subject to equitable tolling and is not a jurisdictional bar.28USCA§2244(d)." Also in the Motion To Amend DE39 petitioner asked the Court to ORDER the state to "HOLD-OFF" on filing ~~a response~~, so as to give petitioner time to amend the petition himself per Willis v Collins,989 F2d 187 (5th Cir1993)(And a party may amend pleading at any time before responsive pleading is served. FRCP Rule 15(a),28USCA.) See Bliss v Samson Resources Co,163 F.R.D.3(E.D.Tex1995)(Plaintiff's motion for leave to amend complaint for which no responsive pleading has been served must be granted.FRPC Rule 15(a)), and McClellon,*supra*,(Court should freely give complainant, especially pro se complainant leave to amend defective allegations in pleading.)

Even if the Court were to rule the petitioner's writ and claims Time-Barred as respondent suggests. Per Day v Donough,126 S.Ct.1675 (2006)(HOLDING;2)before acting on its own initiative to dismiss petition as untimely, court must accord the parties fair notice and opportunity to present their positions.) At which point the petitioner would assert that he is entitled to equitable tolling by showing he meets the diligence and extraordinary circumstances criteria of HOLLAND,*supra*; by alleging that the state created an "unconstitutional" impediment that prevented petitioner from timely filing per Hatcher v Quarterman,305 Fed Appx 195(5thCir2008); that petitioner's failure to satisfy the statute of limitation resulted from external factors beyond his control per In re Lewis,484 F3d 793(5thCir2007); and that he diligently pursued relief in both state and federal courts per In re Lewis,Id. That is "reasonable diligence" per HOLLAND,*supra*. And as per Day v Donough,*supra*, "Rather, the Court holds that a district court has discretion to decide whether the administration of justice is better served by dismissing the case on statute of limitations grounds or by reaching the merits of the petition." And "~~I~~ It would make scant sense to distinguish AEDPA's time bar from these other threshold constraints on federal habeas petitioners (exhaustion, procedural default, and non retroactive activity.)" And again, per the LOOKINGBELL case

cited by respondent on this issue, "Habeas petition is "pending" so as to toll limitation periods only after a petition for a writ of habeas corpus itself is filed," which the Fifth Circuit stated in 2002, a year after DUNCAN, supra, was decided by the Supreme Court.

As far as petitioner blaming his federal habeas attorney for not raising his claims correctly or timely, petitioner would avail himself of the less stringent requirements of HOLLAND, supra, and show "severe attorney negligence" or "gross negligence" by his attorney as the cause of the time-bar without any contributing fault by the petitioner, as he has well documented previously for this Court. And though as respondent has stated, "a petitioner has no right to an attorney who agrees with him," petitioner does have a right to an attorney who does not write to him that, "he is a murderer" or sends him autopsy photos of his dead daughters with requested legal documents and court records. Or her refusing to let petitioner's father know that petitioner is O.K. after TDCJ blocked their mail for months after petitioner filed his May 13, 2011 pro se writ DE62.

Because respondent's defense; that petitioner's writ and claims are "new claims" is false, petitioner does not need to demonstrate extraordinary circumstances or egregious attorney error, or any attorney error to equitable toll his writ and claims, therefore petitioner's writ and claims should be ruled as timely and as having been "fairly presented" in the state's courts and are therefore, exhausted as well in the state's courts and in this Court.

The Court should also take Notice of appointed counsel's conduct in not even pointing out these errors in the state's answer DE66 to the petitioner, but instead wrote the petitioner that his pro se claims were barred. And her failure to even traverse her own raised issues in her REPLY DE73 with one of the petitioner's exceptions as a means of rebuttal. The Court should reconsider the petitioner's prior NOTICES and requests for new or substitute counsel in this action to protect the petitioner from any more attempts by Ms Schmucker to sabotage petitioner's appeal under the guise of gross professional misconduct, bias, and conflicted interests parading as professionalism. He does deserve Due Process.

In respondent's ANSWER DE66 (page 131) he raises his second a second defense which states, "B. Battaglia's allegations are procedurally barred. Battaglia concedes that the claims in his supplemental petition are not exhausted."

Petitioner did state that his pro se claims were not exhausted in state court for the fact that both his direct and state habeas appeal counsels refused to raise or present his claims in his state appeals due to their conflicts of interest. Per Coleman v Thomson, 111 S.Ct.2546(1991)(federal habeas review of claims is barred unless prisoner can demonstrate cause for default and actual prejudice as result of alleged violation of federal law, or demonstrate that failure to consider claims will result in fundamental miscarriage of justice.) Which petitioner did raise in the context of his pro se writ DE62 and in the writ's companion Motion for Stay and Abeyance DE60, citing Ruiz v Quarterman, 504 F3d 523(5th Cir 2007) (The state of Texas interfered with Ruiz's constitutional rights at every critical turn in this litigation, appointing ineffective trial counsel who failed to investigate his past; reappointing same on direct appeal, despite Ruiz's pleas for new lawyer; and finally providing Ruiz with incompetent state habeas counsel, who presented the CCA with 'a set of boilerplate, frivolous claims!')

Petitioner's state and federal appointed counsels raise multiple ineffective assistance of counsel claims in both his state and federal appeals, but refused to raise the facts and grounds based on counsel's actual conflict of interest because, a petitioner alleges, both appointed habeas counsels also labored under similar conflicts of interest. Per Anderson v Sirmons, 476 F3d 1131(10th Cir 2007)(Anderson argued the district court should nevertheless decide the unexhausted issue on the merits because both direct appeal counsel and state provided post-conviction attorneys harbored under a actual conflict of interest which precluded him from receiving effective assistance of counsel. See 28USCA§2254(b) (1)(B)(ii)(provides an exception to the general exhaustion requirement when "circumstances exist that render [state court remedies] ineffective to protect the rights of the applicant.")) Which peti-

itioner also pointed out in his pro se writ by stating, "The state courts appear less interested in pursuing this issue or claim because of potential conflicts and loyalties." DE62 (page 24 of 30) Also see EXHIBITS 4 through 19 for fairly presenting these conflict of interests to the state courts and U.S. Supreme Court since 2005.

Per Murray v Carrier, 106 S.Ct. 2639 (1986) (Cause for a procedural default on appeal ordinarily requires a showing of some external impediment preventing counsel from constructing or raising the claim) (Counsel's failure to raise particular claim or claims on appeal is to be scrutinized under cause and prejudice test when failure is treated as procedural default by state court.) (...or some interference by officials made compliance with state's procedural impracticable, would constitute cause for procedural default.) (... it is not the gravity of the attorney's error that matters, but that it constitutes a violation of petitioner's right to counsel, so that the error must be seen as an external factor, i.e., "imputed to the State.")

See Kimmelman v Morrison, 106 S.Ct. 2574 (Supreme Court set forth reasons why ineffective assistance of counsel claims should be treated differently from other habeas claims in considering procedural bar questions.) See Jennings v Prukett, 7 F3d 782 (8th Cir 1993) ("an attorney's conflict of interest," potentially including a post-conviction counsel's conflict, "maybe extrenal to his client's defense, and thus a basis for finding cause" to excuse procedural default.) And in English v Cody, 146 F3d 1257 (10th Cir 1998) (Conflict itself demonstrated a denial of the right to have effective assistance of counsel.) and (footnote 9....argues persuasively that he could not raise this ground on direct appeal or in his first habeas petition because his appellate counsel operated under a conflict of interest. Cuyler v Sullivan, 11 S.Ct. 1708 (1980) and Jenning v Purkett, suprs.) See also, Mickens v Taylor, 122 S.Ct. 1237 (2002), Earp v Ornoski, 431 F3d 1158 (9th Cir 2005), U.S. v Shwayder, 312 F3d 1109 (9th Cir 2002), and Hovey v Ayers, 458 F3d 892 (9th Cir 2006) on conflicts.

So per Coleman v Thompson, *supra*, "Attorney error that constitutes ineffective assistance of counsel is cause," as petitioner's claims

raise in his pro se writ DE62. Again, the petitioner should be afforded "liberal construction" of his claims and rebuttals to defenses (since he has only a few months to try and learn just a few section of the Fed.R.Civ.P.) per Hernandez v Thaler, *supra*, because of his pro se status. It is obvious that petitioner has raised these ineffective assistance of counsel and actual conflict of interest of counsel claims for 1) they violated the petitioner's Counsel Clause rights under the SIXTH AMENDMENT: AND 2) they overcome any potential procedural default by either the cause and prejudice test or by the magnitude of the constitutional violations throughout the fundamental miscarriage of justice threshold based on actual innocence, which petitioner can actually and factually meet despite respondent's assertions to the contrary.

But the above would not be necessary if the Court rules that the petitioner's "fairly presented" claims to the state's courts, as related in the above time-bar issue and supported by the previously submitted EXHIBITS, adequately present his pro se claims to the state courts and, thus, those claims are not procedurally defaulted.

Per Coleman v Dretke, 395 F3d 216(5th Cir 2004) (The state argues that Coleman did not exhaust his state remedies, because he never properly presented two of his claims to the state court. A prisoner fairly presents a claim to the state court when she asserts the claim "in terms so particular as to call to mind a specific right protected by the Constitution" or alleges "a pattern of facts that is well within the mainstream of constitutional litigation" fn 7, Evans v Court of Common Pleas, 959 F2d 1227 (2nd Cir 1992) (We conclude that Coleman's reply adequately presented his claims to the state court,...The state court's failure to expressly rule on those claims does not prevent the claims from being exhausted. fn. 8 Ridgeway v Baker, 720 F2d 1409 (5th Cir 1983)) See Ridgeway v Baker, Id. (Where defendant presented his habeas petition to Texas intermediate and supreme court, both of which denied without explanation his claim that he was denied due process..., federal petition was not barred on ground he failed to exhaust state remedies. U.S.C.A. Const. Amend. 14)

Petitioner has NOTICED the Court previously of appointed counsel's refusal to properly exhaust these claims in ~~RE~~ April 15, 2010 DE14, August 24, 2010 DE24, and September 13, 2010 DE26. Why counsel would not address the "fairly presented" status of his Notices to the state courts and filed Pro ~~Se~~ ANSWER To State's Answer (REPLY) to his state filed habeas writ is one more indication of Ms Schucker's incompetence or actual conflict of interest and prejudice/bias towards the petitioner. In petitioner's social and economic circles he is about as close to being considered an idiot as possible, but still could figure out that he had to raise his claims in both the state courts and barring their consideration, would than need to present them to the federal court. But once again as cited in Ruiz v Quarterman, supra, petitioner was appointed another undercover executioner from the Texas A.G. office (or Dallas D.A.'s), secretly tasked with making sure petitioner could not raise any realistic claims of any merit and then rolling-over immediately upon the state's defenses. Especially any claims that might touch on "assaults on the professional and personal integrity of these individuals [attorneys]" per Notice DE14 quoting appointed counsel. Counsel failed to adequately traverse her own claims (issues) in her reply DE73 (or did she know they were just boiler-plates put up by state habeas counsel to add pages to petitioner's writ) and would not even use petitioner's pro se grounds (much less work with the petitioner) to save her own presented issues #2 and #6, much less assist petitioner with his REPLY, other than giving him purposely misleading legal advice.

This is a further demonstration of why Texas has executed over 470 individuals since the reinstatement of capital punishment and during the exact same time period the state of California has executed about 10 persons. Given the ~~re~~lative similarities between the two states (other than slavery and racism) even an idiot such as the petitioner can see that the disparity in the number of executions is not based on the law (both in America), but in fact on the abuse and perversion of the law in the State of Texas due to its history of slavery and racism (University of Texas Law School Dean was Ku Klux Klan leader in last century).

Per Ridgeway v Baker, *supra*, (once federal claim has been submitted to state's highest court, exhaustion requirement is satisfied, even if state court fails to address federal claim.) And this Court can see from the attached EXHIBITS filed and submitted to both state courts that petitioner has "fairly presented" the "actively represented conflicting interests" and "an actual conflict of interest adversely affected his layer's performance." That was STRICKLAND quoting CUYLER as taken from Johnson v State, 169 SW3d 223 (CCA 2005) (Once the predicate for a conflict of interest claim is shown, no further showing of prejudice is required, at least in part because a conflict of interest affects the entire representation.) But if a petitioner has a court appointed appeal counsel who refuses to present his claim in her writ and the courts in Texas refuse to acknowledge any writing from a petitioner who has appointed state counsel (who should be termed "pit-bull-counsels" because once they get their teeth (fees) into you you can not get rid of them), what is he to do? How can a petitioner get around this state impediment? Of course! Get rid of state habeas counsel at the federal courthouse and have federal court appoint counsel and present claims in federal writ, but wait, she refuses to raise the claims, too. So naturally the only door possibly left open to a petitioner is to move the Court to allow him to represent himself and amend his timely filed writ to present his previously "fairly presented" claims from the state courts to the federal court. But still having to get past appointed counsel's buddys in the Texas A.G. office because of the potentially embarrassing nature of the petitioner's claims as they relate to both the conduct of the judicial system in Texas as effects the death-penalty and the other aspect of this case; the criminal and moral crimes committed between the state's prejured witnesses and elected and political figures who have assisted these witnesses ~~and concealed~~ "conceal" their crimes and crimes of moral turpitude. Per petitioner's EXHIBIT #1, US v Texas Data Control No. 3:95-cv-550-X, petitioner was the "relator" in that federal FALSE CLAIMS ACT (FCA) trial in 1998 (which the goverment stepped in to prosecute) and therefore took on protected status per 18 U.S.C. §1512(a)(1)(c)(Tampering with a witness, victim, or informant)(a federal crime to kill or attempt to kill...in order

to prevent the communication of information by "any person" to the Court.) Which is what trial counsel and both state and federal appointed counsel are attempting to do. When petitioner Noticed court DE8 regarding potential conflicts and attached a document with IRS and DOJ, appointed counsel returned the document to the petitioner prior to her receiving any prior counsel's files and stated she would not address the issue, as if she had full knowledge of the issues in the petitioner's case within hours of her being appointed as his counsel.

State and appointed counsels do not want petitioner to be able to cross-examine and impeach Ms Laborde-Ghetti or Ms Pearle about their threats to have the petitioner killed for his knowledge of their criminal activities. As Ms Laborde-Ghetti stated by hiring members of the Louisiana Ku Klu Klan to travel to Texas and then murder the petitioner for getting her fired from her law firm in Dallas, Akin, Gump, Strauss, Hauer and Feld, which was recorded and documented in petitioner's legal files and diary, both of which were taken by the Dallas D.A. office, leaked to the media and the writer of a true crime book on the petitioner's case, and then concealed from cross-examination and impeachment in violation of BRADY RULE with the full cooperation and assistance of trial counsel, Mr Johnson.

Ms Laborde-Ghetti would have never traveled to a Texas courtroom to be cross-examined unless she had an absolute gaurentee that she would not be questioned about her past and the records (including audio tapes) that were in the petitioner's possession; including a certified hearing transcript from Judge Carolyn Wright's court in 1988 where Ms Laborde-Ghetti admitted under oath to crimes of moral turpitude, fraud, and prejury to a court; which on its face would be sufficient evidence to establish Ms Laborde-Ghetti as a career criminal and liar, and therefore not eligible to testify in a Texas capital trial. But was suppressed by both prosecution and defense to allow her to further perjure herself on the witness-stand as she had during her and petitioner's civil divorce proceedings; and as she had during her and Mr Clayton's civil divorce proceedings; her personal federal bankruptcy where she was indicted for fraud; and during a bankruptcy hearing at which the petitioner was present when

when Ms Labord testified falsely to a federal judge so she and her law firm could defraud a party of over \$1 million by submitting false and back-dated records to the court which she and other firm lawyers had previously discussed with petitioner and why petitioner was jailed for ten days in 1986, not as stated at his trial. See EXHIBIT #4. July 6, 2004 Letter to CCA transmitting attached State Bar Texas letter same date relating the above facts.

As stated in pro se writ, this is the exact same conduct as in the Ex parte Michael Roy Toney (cited on page 28of30 DE62) where the prosecutors from Ft. Worth hid exculpatory and impeachment evidence about the state's two main witnesses prior attempts to kill Mr Toney so as to project a false impression of credibility of the witnesses which the later discovery of the hidden BRADY materials revealed they did not posses at trial. As was the case with Ms laborde-Ghetti, it was so much more so with regard to Ms Pearl'e testimony. Because Ms pearle's testimony was the basis for the credible and probable cause for the state's admitted illegal search and seizure which was allowed at trial under exigent circumstances soley based on Ms Pearl's credibility. See Brown v State,481 SW2d 106,(Where probable cause for warrantless search will not be upheld merely because exigencies of situation preclude obtaining of a warrant)(Probable cause for warrantless search exists where facts and circumstances which are within knowledge of officer on scene and of which he has reasonable trustworthy information)(Search cannot be justified by what it uncovers.) But because Ms Pearl had no credibility per petitioner's BRADY materials and contacts with police and IRS-CID Agents(which would substantiate Ms Pearl's threats to kill both the petitioner and his children for talking to the IRS-CID Agents about her and Judge John M. Marshall's criminal activities and source of funds), the state, again, needed to project a false impression of Ms pearl's credibility at trial in order to allow their illegal warrantless search and seizure,(when direct appeal counsel refused to raise this and other issues correctly, because it does take some skill to be able to sandbag these issues on the record,I realized my recognizing him from years before as a pedophile,as Mr Lollar was, connected him and Mr Johnson and Mr Lollar and prosecutor Mr Blackmon's conflict.)

And, again, Ms Pearle would have never taken the witness-stand unless she had absolute guarantee of her not being questioned about her claim of murdering MarkShawn Hutchins in her drug-house in August of 1982 and then hiding out in New York City for six months afterwards working as a stripped and high-priced prostitute while legal steps were being taken to close the murder investigation in the Dallas D.A. office by arranging a "No-bill" of her father for the murder on the grounds of self-defense, even though the Dallas Police Report showed the boy was on his knees in the back yard grass, then vomited, and then was shot directly in the back and then in the back of the head and his body dragged to the alley (by Ms Pearle as she claimed to petitioner on numerous occasions after her mental break-down in 1995 from the stress of being at total fraud to all our Highland Park neighbors which resulted in her near suicide and threats to kill her two children then relapse into drug addiction.)

In 2001 Ms Pearle called petitioner and stated she would have a bullet placed in the back of his head for his contacting the IRS-CID Agents and talking to them about her business. Petitioner then called 911 and two Dallas Police Officers came to his home and gave him a police call-sheet to document the incident. This also was taken and concealed by the Dallas D.A. office and Defense counsel refused to cross-examine Ms Pearle or obtain the missing report from the police. And again, the sole purpose being the shoring up of the false and fraudulent impression of Ms Pearle being a credible and trustworthy person and witness. When petitioner met Ms pearle she and her parents claimed she was a "cousin" of then president's son, Mr Bush, and this was confirmed by a number of lawyers and judges met through the Pearl family. Now, petitioner is not quite as dumb as he looks and knew there was something else behind this supposed "relationship", just as he knew that Ms pearl's parents were died-in-the-wool Nazis (but after ten years of preparing tax returns for the very wealthy in Dallas, one does learn to read between the lines)(so to speak.) So petitioner was very interested in this unusual young, skinny, gun-toting, ex-drug addict/lesbian as she was equally interested in a big physically-fit, gun-toting, ex-Marine/Hippie. And is why the State opposes any inquiry into Ms Pearle's background and credibility.

Respondent states (page 132), "It is evident the Battaglia cannot demonstrate cause because he has offered no reason why he could not have raised these claims when he filed his state habeas application." But, petitioner has over and over again, tried to raise these claims for his state writ to deaf ears over nine years without one reply, other than he is "nuts", "crazy," "incompetent," etc... and the worst client in the world." (But then I have the H & R BLOCK of lawyers.)

In addition, petitioner's miscarriage of justice claim is not frivolous as respondent states and is a valid gateway through which petitioner can pass if his pro se claims and other issues are ruled time-barred and procedurally defaulted by the Court. Though the petitioner should not have to reach the exceptions to the time-bar and procedural defaults if the Court holds his claims were "fairly presented" to the state courts. See Lewis v Quarterman, 541 F3d 280 (5th Cir 2008) (This exhaustion requirement is satisfied if the substance of petitioner's claims have been fairly presented to the state court. Anderson v Johnson, 338 F3d 383 (5th Cir 2003))

Respondent (page 134) states, "X. Battaglia is not entitled to an Evidentiary Hearing. Director does not concede that Battaglia pursue his claim with diligence in the state court, which is necessary for a hearing pursuant to 28 USC §2254(b)." But as alluded to in this REPLY and in all of petitioner's prior filings with the courts, petitioner has been more than diligent in pursuing his claims in an environment dead set on denying the petitioner any of his U.S. Constitutional Rights as an American Citizen, and mostly on the grounds of someone's prior prostitute's claims that the petitioner has too many vowels in his last name and that his genes were not as white as his neighbors. Justice requires that the Court hold an evidentiary hearing, not the Director's conjectures.

And as far as the "state record is more than adequate to resolve these issues." Petitioner would contend that the provenance and credibility of "this record" is very suspect, see EXHIBIT #13; Pro Se ANSWER. Petitioner has claimed that he Noticed direct appeal, state and federal habeas counsels of missing items from the record and all refuse to confirm or deny, a trap for lawyers if in writing.

This record the state wants to have the Court rely on is suspect as to its validity and veracity due to 1) its court reported and verifier being jailed twice for contempt by the CCA for not producing the record as ORDERED (did it take that long to go line by line to remove all of the evidence of misconduct as alleged in pro se writ?) and; 2) per EXHIBIT #13, PRO SE ANSWER/REPLY to state habeas writ alleging the court reporter, Ms Mary Belton, herself was participating in the illegal signalling and rigging of the jury during the voir dire. This is not a "new claim", but if the Court is able to ask questions or depose or examine the recording from which this record was produced (because no appoint counsel would dare to) then the petitioner would have the "exculpatory scientific evidence, trustworthy eyewitnes~~s~~ accounts, or critical physical evidence" which would be "new reliable evidence" per the gateways of House v Bell and Schlup v Delo cited by respondent as the essentially predictive standards whether reasonable jurors would have reasonable doubt in light of all the evidence per House v Bell. The state does not want expose its suborned perjury and hidden Brady material and warrantless search and seizure on which petitioner's total trial was based.

Petitioner only first saw portions of his trial record about 30 days prior to the May 13, 2011 due date for his pro se writ DE62. Along with between 3,000 and 4,000 pages of documents he saw for the first time in some bizarre attempt by appointed counsel to bamboozle the petitioner into some fantastic "paper-chase." Then the state took the filed writ DE62 out of the LEGAL MAIL (as it does with ~~all~~ of petitioner's mail) and hid it for two weeks while it checked its own copy to see, "if the cat was out of the bag." As stated in his pro se claims; petitioner noted some critical changes in recorded testimony like: "who owned muder weapons? Answer at trail was "Was told not to look." That is now changed as there is ATF reports showing they were purchased by a company owned by Ms Pearle; Mr Johnson's opening declaration to the jury, "that he is guilty as hell!" which is now missing from this record. Is that because in Florida v Nixon, 124 S.Ct.1509(2004) Cert. Granted (Concession of guilt as ineffectiveness per se despite its role in strategy to avoid death penalty.) He pleads "Not Guilty" then turn to jury "He is guilty as hell!"

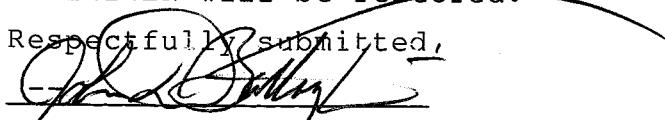
So per McGowen v Thaler, 717 F.Supp.2d 626 (5th Cir 2010), petitioner will question the INTEGRITY of his trial proceeding by asking the Court to have the state and defense counsels produce the supporting record, the missing police video tape made by law enforcement officers witnessing a crime, the two IRS-CID Agents, and the proffer documentary evidence of the criminal conspiracy the petitioner related regarding witness in the 1998 FCA trial and the IRS-CID relating to Ms Pearle's operating ~~of~~ prostitution businesses with her family and their money laundering with state judge John Marshall and his mother Elonore Marshall of Highland Park, Texas

Then through this producing and presenting, show new reliable evidence, whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence (such as video of D.A.s committing a crime with state's witnesses, state's witnesses 100 plus false police reports made against petitioner, hidden certified court hearing transcript of admitted crimes of moral turpitude while under oath, police murder report, bankruptcy fraud indictments, etc...all of which shows if you have sex with the right person you can get away with anything), then the petitioner can show that it is more likely than not that no reasonable juror would have found him guilty beyond a reasonable doubt.

CONCLUSION

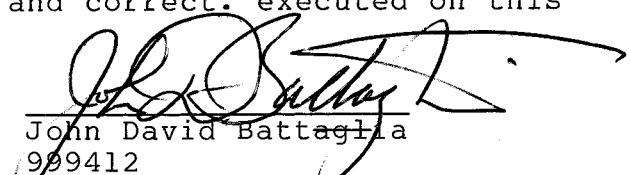
For the above reasons, petitioner prays that this Court finds that the respondent's defense are not valid and without merit and that the petitioner's pro se claims as set out in his pro se supplemental application for writ of habeas corpus DE62 filed with the Court as of May 13, 2011 are not time-barred or unexhausted or procedurally defaulted and are therefore ~~also~~ valid and meritorious and worthy of being entitled to an evidentiary hearing and the granting of habeas relief. So that petitioner's FAITH in America and his LIBERTY AS HER CITIZEN will be restored.

Respectfully submitted,


John David Battaglia
999412, 3872 FM 350 S.
Livingston, TX 77351

28 U.S.C.A. §1746 Unsworn declaration

I, John David Battaglia, the petitioner, declare under the penalty of perjury that the foregoing is true and correct. executed on this 14th Day of September, 2011.


John David Battaglia
999412
3872 FM 350 South
Livingston, TX 77351

CERTIFICATE OF FILING

Per Rules Governing Section 2254 Cases in the U.S. District Courts, Rule 3, Filing the Petition: Inmate Filing; petitioner, John David Battaglia, declares under the penalty of perjury, that I have timely deposited in the TDCJ internal mailing system at 5AM, Thursday, September 15, 2011, a prepaid First Class Postage envelope marked **LEGAL MAIL** and containing this original signed PRO SE SUPPLEMENTAL REPLY with attached EXHIBITS and one judge's carbon copy, to be LOGGED in as **LEGAL MAIL** and then placed in the U.S. Postal Service for delivery to the Clerk of the U.S. District Court, Dallas Division.


John David Battaglia
999412
3872 FM 350 South
Livingston, TX 77351

CERTIFICATION OF SERVICE

I do hereby certify that a true and correct carbon copy of the above and foregoing PRO SE SUPPLEMENTAL REPLY has been placed in the TDCJ internal mailing system at 5AM, September 15, 2011, to be LOGGED IN AS **LEGAL MAIL** and placed in the U.S. Postal Service for delivery to Mr. W. Erich Dryden, Assistant Attorney General, for the Respondent at the following address:

Attorney General of Texas
post-Conviction Division
W. Erich Dryden
P.O. Box 12543
Austin, TX 78711-2548


John David Battaglia
999412
3872 FM 350 South
Livingston, TX 77351

LIST OF ATTACHED EXHIBITS

1. U.S. v Texas Data Control;Civil No.3:95-CV-550-X (4 page)
Relator: John Battaglia, Testimony Record, Filed Sept.29,1998
2. DECLARATION OF CONFLICT BETWEEN CLIENT AND ATTORNEY (3 page)
Date Feb.14, 2004 filed with trial court & CCA
3. ORDER DENYING REQUEST FOR NEW ATTORNEY, Feb.20,2004 (1 page)
4. Letter to CCA transmitting State Bar Letter (4 page)
Dated July 6, 2004, COPY "LEGAL MAIL" from CCA 7/15/2004
5. Letter to a Habeas Attorney, Mark Curriden (1 page)
Date Feb.22,2004 at time was not aware he was counsel on writ
6. Letter to Bill Hill, Dallas District Attorney (3 page)
Dated April 21, 2005 and submitted state courts
7. Letter to Seymour Hersch, The New Yorked, MEDIA (4 page)
Dated June 19, 2005 and submitted to state courts
8. Letter to State Bar Texas, General Counsel (2 page)
Dated June 28, 2005 and submitted to state courts & A.G. TX
9. Letter Al Gonzals, U.S. Attorney General (2 page)
Dated July 7, 2005 and submitted to Tx courts & US Supreme Ct
10. Letter to Mr Abbott, Attorney General Texas (1 page)
Dated July 13, 2005 and submitted to state courts
11. NOTICE filed with Trial Court Judge Warderw/EXHIBITS (4 page)
Dated July 25, 2005 and Filed with CCA & US Supreme Court
12. NOTICE filed with Supreme Court of US w/EXHIBIT 9 &ll(1 page)
Dated August 12, 2005 and submitted to state courts
13. PRO SE ANSWER to STATE'S ORIGINAL ANSWER to WRIT HABEAS (4 page)
Date August 29, 2005 and Filed with CCA & Trial Court
14. Ex parte-letter to CCA, Dated Nov.7,2005, copy trial (2 page)
15. Letter to F.B.I. confirming transmitting EXHIBIT 9 (1 page)
Dated Nov. 13, 2005
16. Ex parte -letter to CCA Judge Cocrun (2 page)
Dated Aug. 22, 2006 and submitted to trial court
17. Letter-Dallas Morning news-MEDIA (1 page)
Dated Sept. 17, 2007 and submitted to state courts
18. BLIND LAWYER LETTER (1 page)
Dated April 25, 2007 and submitted to state courts
19. Ex parte REQUEST TO RECONSIDER MOTION FOR NEW LAWYER (2 page)
Dated Feb.4, 2008 and copied to CCA

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

FILED

SEP 29 1998

NANCY DOHERTY, CLERK

BY

Deputy

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF TEXAS
3 DALLAS DIVISION

4 UNITED STATES OF AMERICA Civil No. 3:95-CV-550-X

5 vs.

6 TEXAS DATA CONTROL, et al Dallas, Texas

August 25, 1998

7

8 VOLUME 3-C
9 TRANSCRIPT OF TRIAL
10 [Testimony of John Battaglia]
11 BEFORE THE HONORABLE JOE KENDALL,
12 UNITED STATES DISTRICT JUDGE,
13 and a Jury

14 APPEARANCES:

15 For the Government:

16 Ms. Katherine Savers McGovern
17 Assistant United States Attorney
18 U.S. Courthouse, Third Floor
19 1100 Commerce Street
20 Dallas, Texas 75242
21 (214) 659-8600

22

23 Mr. Robert P. Fletcher
24 Attorney at Law
25 Nixon Hargrave Devans & Doyle
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26 For the Relator:

27 Mr. Robert M. Clark, Jr.
28 Attorney at Law
29 Eddleman, Clark & Rosen
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30

31 Mr. James F. Lane, P.A.
32 Attorney at Law
33 823 Parkway Street, P.O. Box 2091
Conway, AR 72033-2091
(501) 329-7749

1 For Defendant TDC:

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Mr. Thomas M. Melsheimer and
Ms. Renee Skinner
Attorneys at Law
Lynn, Stodghill, Melsheimer,
Tillotson, L.L.P.
750 N. St. Paul Street, Suite 1400
Dallas, Texas 75201
(214) 981-3800

6 For Defendant FIserv/
7 Data Line:

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Weil, Gotshal & Manges L.L.P.
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(305) 577-3177

10 For Defendants CSC and
11 CSC Logic:

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Attorneys at Law
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1050 Connecticut Avenue, NW
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(202) 955-8679

14 Mr. Timothy J. Hatch
15 Attorney at Law
16 Gibson, Dunn & Crutcher L.L.P.
17 333 South Grand Avenue
18 Los Angeles, California 90071-3197||
19 (213) 229-7368

21 For Defendants Telacu/
22 Carpenter and Carpenter &
23 Company:

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Attorney at Law
Manatt, Phelps & Phillips
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(310) 312-4151

25 For Defendants First
Mortgage Associates, First
Mortgage Corporation and
Mitchell Sweet & Associates
Educational, Inc.:

Mr. James Armstrong
Attorney at Law
Sacks Tierney, P.A.
2929 North Central Ave., 14th Floor||
Phoenix, Arizona 85012
(602) 279-4900

U.S. District Court

EX #1.3

1 INDEX2 RELATOR'S EVIDENCE

| 3 Witnesses: | 4 Voir | 5 Direct | 6 Cross | 7 Redirect | 8 Recross | 9 Dire | 10 Court |
|--------------------------------|--------------------------|----------------------------|---------------------------|------------------------------|-----------------------------|--------------------------|---------------------------|
| John D. Battaglia | | 5 | 57 | -- | -- | -- | -- |
| | | -- | 62 | -- | -- | -- | 151 |

11 RELATOR'S DOCUMENTARY EVIDENCE

| 12 Exhibit | 13 Offered | 14 Admitted |
|-----------------------------|-----------------------------|------------------------------|
| 9 | 17 | 16 |
| 14 | 18 | 18 |
| 15 | 19 | 19 |
| 16 | 20 | 21 |
| 17 | 24 | 24 |
| 23 - 27 | 27 | 27 |
| 30 - 33 | 27 | 27 |

15 DEFENDANT TDC'S DOCUMENTARY EVIDENCE

| 16 Exhibit | 17 Offered | 18 Admitted |
|-----------------------------|-----------------------------|------------------------------|
| 760 | 144 | 146 |

filed
Trial Court No. F01-52159-H

EX PARTE

IN THE CRIMINAL DISTRICT

COURT NUMBER ONE

JOHN DAVID BATTAGLIA
Applicant

DALLAS COUNTY, TEXAS

DECLARATION OF CONFLICT BETWEEN CLIENT AND ATTORNEY

TO THE HONORABLE JUDGE JANICE WARDER:

COMES NOW, JOHN DAVID BATTAGLIA, Applicant, in the above styled and numbered cause, and files this declaration of conflict between client and attorney. In support of said declaration, Applicant would respectfully show the following:

1.

Applicant was convicted and sentenced to death in the Criminal District Court Number One of Dallas County, Texas.

2.

Applicant is an indigent person and consequently, the Honorable Judge Janice Warder of the Criminal District Court Number One of Dallas County, Texas, appointed Jan E. Hemphill, Attorney at Law, 4519 West Lovers Lane, Dallas, Texas 75209-3161, to represent Applicant.

3.

The Texas Court of Criminal Appeals approved the appointment of Jan E. Hemphill to represent Applicant for the purpose of filing an Article 11.071 application for writ of habeas corpus.

4.

There has been an ongoing conflict between Applicant and Jan E. Hemphill since May 28, 2002.

5.

Despite the fact that Jan E. Hemphill visited Applicant on May 28, 2002, counsel has not acquainted herself with Applicant and/or the facts and issues of the case.

. . .

EXHIBIT #2.1

6.

There is a total breakdown in communications between client and attorney.

7.

Even though counsel had not reviewed the trial record or investigated the facts of the case she stated: "It looks like you are guilty and will be executed." (May 28, 2002, 3:00 PM)

8.

When Applicant attempted to have a meaningful discussion about the case and issues that should be raised in the application for writ of habeas corpus, counsel stated: "My hand is tired of writing, I have been here all day visiting with clients." When Applicant asked if perhaps Mr. Abbott could take some notes, Jan E. Hemphill further stated: "It has been a long day and we must leave." These statements were made within the first five minutes of our meeting.

9.

Rather than entertain anything Applicant had to say, Jan E. Hemphill stated: "You really don't have any issues that will help with your appeals."

10.

Some of the issues Applicant attempted to discuss with counsel, Jan E. Hemphill, include but are not limited to ineffective assistance of trial counsel in both guilt/innocence and punishment phases of the trial. Trial counsel, Paul Johnson, told Applicant before and during the trial: "I'm not here to defend you, I was appointed to make sure you get the death penalty and that all the i's are dotted and t's crossed on your death sentence." Defense counsel not only failed but refused to investigate and discover Applicant's psychiatric records as well as other mitigation evidence, including but not limited to evidence of childhood abuse. Trial counsel failed and refused to subject the State's case to a meaningful adversarial proceeding in both guilt/innocence and punishment phases of the trial. Trial counsel failed and refused upon request of Applicant to impeach

.../...

Ex#2.2

State's witnesses or object to the State's knowingly presenting perjured testimony on both phases of the trial.

11.

The Fifth Circuit Court of Appeals has determined Jan E. Hemphill was ineffective in another death penalty case, Lewis v. Dretke, F.3d No.02-11007 (5th Cir.2003).

12.

Jan E. Hemphill testified that she was ineffective in her representation of George Andrew Hopper, another death penalty case.

13.

WHEREFORE, PREMISES CONSIDERED, Applicant prays that upon examination of this declaration that this Honorable court discharge Jan E. Hemphill from this case and appoint a competent attorney, qualified to represent Applicant in this death penalty case. If this Honorable court orders Jan E. Hemphill to file an affidavit in response to this declaration, Applicant respectfully requests the opportunity to file an affidavit opposing the appointment. In the alternative, Applicant requests a telephonic conference with the court and Jan E. Hemphill.

Respectfully submitted,

John David Battaglia
3872 F.M. 350 S. #999412
Livingston, Texas 77351

I, John David Battaglia, being presently incarcerated at the Polunski Unit of the Texas Department of Criminal Justice, I.D., declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge.

John David Battaglia
Dated: _____

.../...

Ex#2.3



Judge Janice Warder
133 N. Industrial Blvd. LB 38
Dallas, Tx 75207

Mary Belton
Court Reporter

Carol-Lou Nicholson
Court Coordinator

February 20, 2004

Mr. John Battaglia
#999412
3872 F. M. 350 South
Livingston, Tx 77351

Re: State of Texas vs John David Battaglia
F01-52159-H

Dear Mr. Battaglia:

Your request for a new attorney is denied.

Sincerely,

A handwritten signature in black ink that reads "Janice Warder". Below the signature, the name "Janice Warder" is printed in a smaller, sans-serif font, followed by "Judge" underneath.

EXHIBIT #3

JOHN DAVID BATTAGLIA
999412
3872 FM 350 South
Livingston, TX 77351

July 6, 2004

Troy Bennett
Clerk of the Court
Texas Court of Criminal Appeals
P.O. Box 12308, Capital Station
Austin, Texas 78711

COPY
Rec'd 7/15/11 LEGAL MAIL
for C.C.A. Clerk

RE: Ex parte John David Battaglia

Dear Mr. Bennett:

Enclosed please find a copy of a three page letter I have written to the Office of the Chief Disciplinary Counsel; A. Jaffe, of the State Bar of Texas inwhich I am requesting the State Bar's Texas Disciplinary Rules of Professional Conduct (the rules) and State Bar of Texas Grievance Forms so that I may file timely complaints against named attorneys who either broke certian laws or assisted in concealing material documents and testimonies at my trial and assisted the prosecution in suborning perjury from the state's two primary witnesses against me at trial. The letter also notes that my trial attorney, Mr. Paul Johnson, provide ineffective assistance to my defense and had a significant conflict of interest which precluded him from fairly representing my interests at trial.

I would like the enclosed copy of this letter placed in my file. If there is a way for me to obtain a stamped copy of this letter for my records, would you please write me at the above address with your instructions and any costs which may be required in obtaining such stamped copies.

Thank you for your assistance in this matter.

Sincerely,
John D. Battaglia

cc:file
cc:State Bar

EXHIBIT #4.1

JOHN DAVID BATTAGLIA

999412

3872 FM 350 South
Livingston, TX 77351

July 6, 2004

Office of the Chief Disciplinary Counsel, A. Jaffe
State Bar of Texas
P.O. Box 12487, Capitol Station
Austin, Texas 78711

COPY

Dear A. Jaffe:

I received your letter dated June 29, 2004 and would like to note that you failed to provide me with either the State Bar's Texas Disciplinary Rules of Professional Conduct (the rules) or the requested State Bar of Texas Grievance Forms as I had requested on June 19, 2004 for the attorneys listed in that letter along with the information that all were from Dallas, Texas with the exception of Ms. LaBorde (a.k.a. Ward, or Clayton, or Ghetti).

Again, the attorneys ~~is~~ need to file a Grievance Form against are:
• Edwin W. Davis, No. 05485300, of Dallas, Texas.
• Frank Moore, No. 14333500, of Dallas, Texas.
• James B. Martin, No. 13076000, of Dallas, Texas.
• David P. Yturri, No. 22230550, of Dallas, Texas.
• Robert M. Clark, No. 04298200, of Dallas, Texas.
• F.H. Entz Jr., No. 68633000, of Dallas, Texas.
• Bradley K. Lollar, No. 12508700, of Dallas, Texas.
• Georgina Garcia, No. 90001084, of Dallas, Texas.
• Cynthia D. Dyer, No. 00787409, of Dallas, Texas.

In addition I want to file Grievance Forms against a Judge Theo Bedard (not sure of spelling) a family court judge in Dallas, Texas. The attorney Hanse you were unable to locate may be a Larry Hanse and during the year 2000 he was a name partner with the above named Mr. Edwin W. Davis in a Dallas Law Firm called McShane Davis and Hanse. Mr. Hanse and Mr. Davis told me outside of Judge Bedard's courtroom in March of 2000 that I wouldn't be able to see my two daughters until they were 18 years of age if I went into the court room and told the Judge that they were blackmailing from not talking to the Internal Revenue Service regarding my wife, Mary Jean Pearle Battaglia's, tax fraud and other criminal activities. Just a few months prior to this encounter two IRS-CID Agents had met with me in my CPA office and had informed me that my wife had been involved in criminal prostitution businesses and possible money laundering activities. I had at that meeting informed the IRS-CID Agents that I had become aware that my wife and her family were also involved in smuggling, drug selling, and the buying and selling of stolen antiques and jewelry. In addition I informed the Agents that my wife and her attorneys, Mr. Hanse and Mr. Davis, were attempting to force me to file fraudulent federal income tax returns for 1996, 1997, 1998, and 1999 which would not reflect over \$1,000,000 in cash my wife had received during that period which I was aware of and had documentation to substantiate its receipt by my wife. I also told the Agents I thought my wife or her attorneys had listening devices in my CPA and on my phone because after I had spoken with the IRS-CID Agents from my office on February 14, 2000 Mr. Davis served me with a subpoena and specifically requested all communications and documents I had given to the IRS. EX#4.2

This activity by the two attorneys, Mr. Davis and Mr. Hanse, continued for approximately 18 months until they involved the Dallas District Attorney, Ms. Dyer, and her supervisor, whom I only knew as Bryan (and am not sure if that is his first or last name, but I did in early 2001 observe this, Bryan, on a surveillance video taken by off-duty University Park Police Officers hired by a Mr. Steven Lowder to observe and document his then wife, Mallissa Lowder, having a lesbian affair with my former wife, Ms. Pearle, and their drug usage, which I witnessed this Dallas Assistant District Attorney who had helped the above named Davis and Hanse force me to accept their terms for my divorce settlement and a plea agreement to a false misdemeanor assault charge for which the agreed terms were immediately changed after I had signed the forms in a Judge Finn's courtroom in August of 2000). COPY

I will point out that the larger issue is the fact that all of the above and more, plus documentation was given to my court appointed attorney, Mr. Paul Johnson, who in turn informed the Dallas D.A.s who prosecuted my capital murder trial and who assisted Mr. Johnson in concealing all of the above as well as the fact that the murder weapons found in my apartment were in fact the property of Ms. Peale and that at my trial the weapons expert was specifically asked not to determine the ownership of these weapons. Another very relevant item was a murder report by the Dallas Police Department concerning the August 1982 shooting death of an 18 year old boy named, Mark Shawn Hutchins. I had obtained this report after being told by my then wife, Ms. Pearle, that she would have me killed like this boy in the report if I spoke to any one about where she was obtaining her largest amounts of money from and after she had learned that I had spoken to the IRS-CID Agents she called me one evening and told me she would have a bullet put in the back of my head like she did to that boy back in 1982 for my talking to the IRS. I immediately called the Dallas Police and they came to my home and told me they could do nothing regarding the threat, but gave me a call sheet, which the Dallas D.A. or Police took from my home along with all of my records relating to the above and my first wife, Ms. LaBorde.

Again, Mr. Johnson, my trial attorney, was informed of all of the above and insisted that he was appointed to see that I was executed and not to defend me. Mr. Johnson pointed out on a number of occasions that he and the trial Judge, Janice Warder, had worked together in the Dallas District Attorneys office and that they together with the three D.A.s at the opposite table should tell me how things were going to turn out for me; in a death sentence.

I realize that some of Mr. Johnson's attitude had to do with my knowledge of the Assistant D.A.s drug use and what I later learned from a client attorney who had dealings with this D.A. and a quid pro quo drugs for assigned cases and kick-backs from posted cash bonds. Mr. Johnson also didn't like the fact that I knew of his friend and former Dallas D.A., Mr. Lollar's homosexual activities and sexual activities with minor boys back in the mid-1980's of which I was a witness and the fact that previously when I had showed Mr. Lollar the 18 page Dallas Murder report of the boy in 1982 which my wife, Ms. Pearle, had stated to me she had killed, Mr. Lollar stated to me that the boy had been executed and led me to believe that somehow that the Non-bill for the murder had been arranged by someone in the Dallas D.A.s office back in 1982, much as my former brother-in-law, Mr. Robert M. Clark, had insinuated to me on prior occasions.

LEGAL MAIL - State Bar of Texas - 7/6/4 SD/PAW/14 Page 3 of 3

I wanted to make these facts known during my trial, but when I tried to fire Mr. Johnson or asked to speak to the Judge, I was ordered to take a number of psychiatric drugs and was later told by Mr. Johnson that if I tried to talk while in the courtroom I would not be fed (which was very important to me once under the influence of psychiatric drugs) and that an electronic shock belt would be placed on my chest. It took well over six months for the affects of these drugs to wear off once they were stopped being given to me which happened to be the day I arrived here on Texas Death Row. The TDCJ psychiatric staff informed me that there was no record of my being ordered to take the drugs for the previous six months and that there was nothing wrong with me. As one could imagine it took me almost a full year to fully realize what had taken place, although I am still very unclear on a great deal of the events which led to the deaths of my daughters Faith & Liberty.

Not to bore you too much with my problems with these lawyers, I still need to get you to determine the status of Ms. Michelle Ghetti or whatever name she is registered under in your files. As I stated in my previous letter she is currently a law professor at Southern University Law School in Baton Rouge, LA. When I met her in 1984 she was introduced as Michelle LaBorde and was employed as a tax attorney at the Dallas office of Akin, Gump, Struas, Haur and Feld. She intentionally became pregnant in February of 1985 and told me that I had to marry her or she would abort the baby and it would be my fault (I'm Catholic), when I finally agreed (because during the period of two months I came to realize this woman was crazy) she told me we would have to wait because she needed to get a divorce from her husband ~~and~~ Mr. James Norman Clayton, III, whom she had failed to mention to me she was even married to (this fella was at the time an attorney with the Dallas law firm of Jackson Walker). After the birth of my daughter, Christie, Ms. LaBorde was transferred from the tax section to the bankruptcy section (I had it on good authority the move was made by the head of the tax section and firm managing partner, Mr. Ed Copley, because of Ms. LaBorde's implied threat of blackmail of Mr. Copley for some prior indiscretion) where she began another affair with one of the three former federal bankruptcy judges whom made up the partners of that section. Now my old roommate and friend, Mr. Mark A. Wiesbart, did want me to know that Mr. Gandy (~~when~~ he clerked for while he was on the bench) was not involved (which I knew) and that the other partner, Jay Geck, whom had just been ousted when his Akin, Gump, et al. AMEX credit card was reported as one of those found by the FBI in Congressman Barney Franks gay prostitute roommates receipts, as reported in the Washington Post, so that left this rather sleazy short fella by the name of Don (B- something, like Baker or Barker, I still have a mental block).

Well the real interesting part of this sordid affair was that just prior to my filing for divorce from Ms. Whomever, I was asked to take part in a phone conversation one night at our home with another firm attorney, Mr. Ford Lacy, regarding an issue in which a client of the firm had transferred about a million dollars to Akin, Gump, et al. just prior to the client's filing for bankruptcy and that the named partners wife, Ms. Feld, was on the board of the client, Diamond Lumber, (I think) and that the money would have to be returned or turned over to the creditors or trustees. Well the long and the short of it was it was agreed to falsify the corporate records and use back-dates and Ms. LaBorde swore to the records truthfulness in Judge Felsenthal's Court. When I told her I would raise the issue in our divorce I was arrested and charged with, nothing, and held in jail until I promised to be quite.

CC:ONE
CC:CCAV*J.D. Salley*

Ex#4.4

LEGAL MAIL

JOHN DAVID BATTAGLIA
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Page 1 of L

February 22, 2005

Mr. Mark Curriden, Attorney
Vinson & Elkins, LLP
2001 Ross Avenue
Suite 3700
Dallas, TX 75201-2975

RE: Capital defendants deserve a competent justice system

Dear Mr. Curriden,

I read your and Judge Higginbotham's OP/ED article a few weeks ago with some interest since I am one of those Texas death penalty recipients you referred to. As one of these recipients, I must point out to you that there is no 'microscope', especially at the County and State levels, maybe somewhere else, but not here in Texas. And you refer to our deserving a 'competent justice system,' how about one that isn't ripe with fraud and corruption just for starters.

I would like to enclose a copy of a letter I recently sent to the NPR News program regarding the death penalty (no response) and ask for your comments, if you can provide any. I have been at a total loss regarding my trial and appeals, for every attorney to date has told me I am guilty and should be executed, even though I had not been asked one single question or allowed to even speak. When I attempted such an act with my trial attorney I was immediately drugged for over half a year and from that experience realized that I had been similarly for about a week or two before my arrest in 2001 and for some period after while in the Dallas County jail. When I realized this and tried to tell my attorney that just days before my arrest I had felt so ill and unusual that I had seen a doctor and he had a \$150 blood and lab test done on me and prescribed two medications, but my attorney refused to obtain these and all of my medical records as well as hundreds of financial documents I had turned over to IRS-CID Agents in 1999 and 2000 regarding federal tax fraud, federal bank fraud, and federal money laundering by my wife, brother-in-law/attorney, and a number of Dallas County and Federal Judges: Any suggestions?

Enclosed 5 pg. wks 1/13/5 is via e-mail. Sincerely,



EXHIBIT #5

JOHNDavid BATTAGLIA
999412
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Livingston, TX 77351

April 21, 2005

Page 1 Of 3

Mr. William "Bill" Hill
Dallas District Attorney
Frank Crowley Courts Bldg.
133 N. Industrial Blvd.
Dallas, Texas 75207-4399

RE: Supervisor of Ms. Cynthia Dyer in Judge Finn's Court in 2000

Dear Mr. Hill:

I am writing to request the name and State Bar Card Number of the Assistant District Attorney who in the year 2000 was the supervisor for Assistant District Attorney, Cynthia D. Dyer (Bar No. 00787409) in then Judge David Finn's Family Violence Court. I only remember the supervising attorney as Bryan (?) and I am not sure if that is his first or last name, but I remember he was rather short and had black hair and eyeglasses.

This D.A. Bryan was present in Judge Finn's Court in mid August 2000 when I had a trial date set for a false charge made by my wife, Mary Jean Pearle. My attorney, David P. Yturri (No. 22230550) refused to let me proceed with my trial and stated to me that the two Dallas D.A.'s, Ms. Dyer and this Bryan, would not allow me to have a trial and said I would have to plead to the charge set for that day or they would charge me with additional offenses. I noted that my wife and her lover, Malisa Lowder, were in the small room with the two D.A.'s.

When I asked to speak to Judge Finn I was told I could not. When I asked if I could fire Mr. Yturri and retain an honest attorney I was told I could not have another delay. I was presented with no apparent choice and was forced to accept the two DA's terms. When I was signing the Judge's paperwork in the clerk's area the bailiff, Sheriff Officer Burke, came up to me and asked my name and told me I was under arrest. He had waited until I had signed the Judge's Order (of which the terms were changed by the time I reported to the county probation office) then took me before the Judge while Ms. Dyer and this D.A. Bryan were standing at their table and smiling at me (please note that I had never spoken a word directly to either of these attorneys.) When Judge Finn asked Ms. Dyer why she had just put a charge for my arrest on the computer after I had agreed to her plead terms, Ms. Dyer became very nervous and started to shake and lied to the Judge that she did not do it, but Officer Burke had just told me and my attorney that Ms. Dyer had just ordered a warrant for my arrest after I pleaded before the Judge and went to the clerk's area to sign the forms.

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EXHIBIT #6.1

Dallas D.A. Hill -4/21/5(JDVD BATTAGLIA

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Months later I was asked by Steve Lowder to view a undercover surveillance video which showed his wife, Malissa Lowder, and her lesbian lover, Mary Jean Pearle, and this D.A. Bryan, passing a bag of cocaine between each other at an Oak Lawn restaurant.

I asked Steve Lowder why he wanted me to watch and identify the D.A. Bryan in the video and he stated that he had hired a couple of off-duty police detectives to follow his wife, Malissa, and to listen to her telephone conversations and that the police officers had told him that they had heard his wife and Mary Jean Pearle discuss how she had filed over 100 false police reports against me and talked about how she had a "friend" in the Highland Park Police Department and down at the courthouse.

I reminded Steve Lowder that I was very much aware of this and had asked him and some other Highland Park guys for some help and none was offered. I had told Steve Lowder previously how Assistant U.S. Attorney Katherine Savers-McGovern and U.S. Attorney Paul Coggins had threatened my wife with criminal charges if I did not agree to change my testimony in a federal False Claims Act (FCA) trial in front of Judge Joe Kendall (Civil No. 3:95-CV-550-X) in 1998 and how in 1999 I overheard my wife, Mary Jean Pearle, complain about her brother and my attorney, Robert "Bobby" M. Clark (Bar No. 04298200) receiving several hundred thousand dollars for making me change my testimony in the federal fraud trial. I had also told Steve about how I had contacted the Fort Worth office of the Internal Revenue Service's, Criminal Investigation Division (IRS-CID) and had meetings in my Dallas CPA office with Agent Bonnie Stone and her Administrative Assistant, Ms. Linda Syle, in which I had stated my concern about the criminal "witness tampering" by the U.S. Attorney in the FCA trial and how the defense attorneys Mr. Mike Lynn and Mr. Tom Melsheimer appeared to have assisted Mr. Coggins and possibly Senator Kay Baily Hutchinson in "fixing" the outcome of the FCA trial so the lead defendant, Computer Science Corporation (CSC) could be awarded the largest government contract to that date; \$10 billion for the modernizing of the IRS computer systems (CSC was already a DOJ, NSA, NASA, and Treasury Department contractor.) I told the IRS-CID Agents of my concern regarding my wife, Mary Jean Pearle's criminal activities and how recently she had filed a divorce lawsuit against me because I had questioned her about her activities, where she was obtaining her large amounts of moneys from, and I had refused to file fraudulent federal income tax returns for her as she and her two attorneys, Mr. Ed Davis (Bar No. 05485300) and Mr. Larry Hanse (Bar No. 0881300) had been pressuring me to do under the threat of not seeing my children. At the meeting Agent Stone had informed me that my wife, Mary Jean Pearle and her family had been under investigation by the IRS before and that Mary Jean Pearle had used false identities with the IRS and that the large amounts of moneys I was worried about may have come from prostitution businesses that my wife and her family were thought to have operated in Dallas for a number of years. I later told the IRS-CID Agent Stone that my wife had learned of my discussion with the IRS and was threatening to have me "killed" like she had some boy named Mark Shawn Hutchins in her yard in August 1982.

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EXHIBIT #6.2

Dallas D.B. Hill -4/21/5 JDVD SATTAGLIA

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Steve Lowder said he was concerned that Mary Jean Pearie and his wife Malisa were going to run the same "scam" on him that they and their attorneys, Ed Davis and Lary Hanse, had run on me to sign over all of my community property and visitation rights to my children; by filing false family violence charges against him and then using the threat of keeping him from seeing his children as leverage to force him to sign over to Malisa a \$10 million Trust he and his Aunt had set up for him before he had married Malissa. Steve stated the Trust has been set up for just this reason because he knew of Malissa's cocaine abuse and lesbian sexual activities while they were both undergraduates at SMU and wanted to be sure she had not married him just because he had some large family assets.

I told Steve Lowde~~s~~ that I agreed that he was in "big trouble" and advised him to make all of the above known to his attorney and to not go near either Malissa or Mary Jean Pearle without at least one witness that he knew well. I told Steve that I beleaved this was some type of "pattern" because I did not learn about my wife, Mary Jean Pearle's drug addictions and lesbian past until 1996 after we had moved to Highland Park and she had started seeing her old high school girl friend, Karen Rogers, then within a few months Mary Jean Pearle had started using drugs again and going away to have sex with Karen Rogers. Within a year my wife's drug use had gotten much worse, to where she would disappear for 12 hours a day and show back up at home with a young man or woman and very much worn out. Most of the time I assumed it was do to the drugs.

I told Steve Lowder how Mary Jean Pearle had told me of Karen Roger's bi-sexual activities and partys she went to which were for "swinging" and how her ex-husband and father of her two boys was upset about her activities and how Karen had his parental rights to see his two boys removed. And how when Karen Rogers was always over at my house with Mary Jean pearle she told me one day that if I tryd to divorce Mary Jean Pearle they could make sure I would not see my girls again; like her brother had done to his child's mother, even though Karen stated he was a full-time heroin addict. She told me nothing mattered except who had more money and that Mary Jean Pearle could bury me.

I told Steve that I had met an attorney in Deep Elm who was very informed about the drug business in Dallas and had pointed out to me that she had known of my wife and that some of her friends were cocaine drug dealers to the rich Park Cities and Preston Hollow crowd. I asked the attorney if she knew the D.A. Bryan and she said yes, that he was "cool." I asked her how "cool" this D.A. Bryan was and she reminded me ~~about~~ some questions she had asked me months earlier about large amounts of cash and the IRS and that this "cool" D.A. Bryan was her friend who assigned her criminal cases from which she got cash kick-backs from the Bond Companys and the referred attorneys of which she kicked-back some of the cash and drugs to "cool" D.A. Bryan. I immediately contacted my new attorney, Brad K. Lollar to talk to the police or District Attorney, but he must have called someone else. Thanks for your help Mr. Hill, you're a real straight guy, aren't you?

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EXHIBIT #6.3

MEDIA MAIL

JOHNDavid BATTAGLIA
999412
3872 FM 350 South
Livingston, TX 77351

Page 1 of 4

June 19, 2005

Mr. Seymour M. Hersh
The New Yorker
4 Time Square
New York, NY 10036

Subject: Conspiracies

Dear Mr. Hersh,

I read your "Watergate Days" piece in the New Yorker today and some of your other recent investigative reporting about our government and was wondering if you might look over a few documents I have enclosed relating to a conspiracy by the Dallas District Attorney's Office and illegal activities during my capital murder trial in Dallas in 2002. The D.A., Mr; Bill Hill, is what some of my old Highland Park neighbors call "Confederacy Friendly" and pretty well connected with our local celebrity, Mr. Bush (this is Bush country.)

My actual conspiracy problem started a few years earlier when I tried to stop and then report wide-spread fraud and corruption in my regional RTC (Resolution Trust Corp.) office during the early 1990's. After I failed going through the chain-of-command, up to Chairman, Al Casey, and got demoted and fired in the process, I contacted a congressman from Alabama on the House Banking Committee, Richard Shelby, and was directed by his chief-of-staff to contact the House Oversight Committee on the RTC who took my investigative work and opened their own investigation and published the results in one of their quarterly reports to congress about data servicing contractor, Texas Data Control, Joint Venture (TDC, JV.) This forced the internal RTC-IG to open an investigation inwhich I became the source of information for both the Washington RTC-IG and the Dallas IG field auditors.

Almost a year into the investigation I was told by IG-Investigator, Don Ryburn, in Dallas that the IG was going to terminate the work with a finding of no fraud and when I asked him why he explained to me that the RTC-IG was receiving pressure from the newly appointed CFO, Donna Cunningham, to back-off (he also explained that she was reported to be a college friend of then First Lady, Hilary Clinton, and that all of these fraud investigations were to be stopped.) Then I was approached by an employee of the RTC I had hired a few years prior when I was recruiting professional CPA's to assist me with closing failed SBL's (he is now an Investigator with the U.S. Attorney's Office in Ft. Worth, TX) who suggested I file a False Claims Act (FCA) or "whistle-blower's" lawsuite against the contractor I had found defrauding the RTC; TDC, JV. He even provided me a draft lawsuite and the name and number of an attorney with experience in Arkansas. He also mentioned his dad was a carreer CIA in D.C. and that this TDC, JV was actually Computer Science Corp (CSC) and they were pushing out EDS.

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EXHIBIT #7.1

Mr. Hersh/Media Mail

JDVD BATTAGLIA

Page 2 of 4

In 1995 I filed the False Claims Act lawsuit against the contractor, TDC, JV, and its six joint venture partners, including the party that actually committed the computer and false billing fraud, Computer Science Corporation (CSC) under seal with the U.S. Attorney General, Janet Reno, (Civil No. 3:95-CV-550-X) and before the end of 1995 the U.S. Attorney joined the suit and took over its prosecution. During this time I was contacted by a person claiming to be working for the election of Senator Bob Dole for President and asked me if I would be willing to be present at one of the Presidential Debates to ask a question about corruption at the RTC and the Clinton Administrations refusal to address it. I told the person that I would, but was never contacted again, though I was encouraged to keep up my investigation and lawsuit.

On December 31, 1995 I was terminated from the FDIC/RTC after 7½ years, but in the context of the filed lawsuit (and an earlier EEOC lawsuit and investigation; which went nowhere because I was deemed too White!) I had documented not only how the contractor, TDC, JV, was over-billing the government (\$7 million out of a \$21 million Total) but how the false reports the contractor was providing for non-existent assets they maintained on their mainframe computer systems at Computer Science Corp (CSC) was in turn being used by Senior RTC management to falsely or fraudulently over budget for internal and external contract services for Assets in Liquidation that did not exist (this amount was close to 50% of the total regional assets in inventory under RTC Receivership and Liquidation Management and I had calculated in excess of \$100 million in unnecessary contracts had been awarded in my region alone by this time - also at the time my position was Southwest Regional Operations Specialist (supervisory) LG-14 (Liquidation Grade same as GS-14 in other federal service) and I managed the regional Budgeting and Contractor Management Function.)

I apologize for how boring this must seem, but investigating computer and financial fraud is supposed to be rather boring and unexciting work unless you come up against this particular contractor and criminal Computer Science Corporation (CSC). Before we went to trial in 1998 I received an odd warning from the RTC employee who had originally advised me to file the FCA lawsuit and provided me with the original attorney, who was later joined by my brother-in-law, attorney, Robert M. Clark, and he stated that I might think of dropping the lawsuit because "my life might be in danger." I took the warning as more of a sick joke and thought that such a thing was not possible, but just before the trial was to start I was threatened by the U.S. Attorney that if I testified about any wrong-doing or corruption by any RTC employee or senior management my wife and her family would be charged with some type of criminal activity which at the time I was at a loss to quite figure out. Since I went on the witness-stand in two days from the threat I asked to drop the FCA lawsuit or turn it over 100% to the government and was told by the U.S.A. and my two attorneys that I could not. When Judge Joe Kendal of all people cross-examined me about government employees being involved in the fraud or trying to hide it I had to say I did not think so even though my whole originally filed suit and three years of discovery said the totally opposite. When Judge Kendal asked these questions instead of either the defense or the U.S. Attorney I knew it was a "Rigged Trial."

EXHIBIT #7.2

Mr. Hersh/Media Mail JDVD BATTAGLIA

Page 3 of 4

All of the "players" or attorneys at the trial in 1998; Mike Lynn, Tom Melsheimer, Renee Skinner (who only a week before the trial started was Judge Joe Kendal's law clerk), U.S.A. Paul Coggins are all kind of known around our neck of the woods as 'East Dallas Liberals' as apposed to the more "Klan" or "Confederacy Friendly" conservatives of my old Highland Park and University Park neighborhoods. Some are former Akin, Gump, Strauss, Hauer & Feld attorneys as was my first wife, Professor Michelle Ward LaBorde Ghetti and U.S.Attorney Paul Coggins's wife, Regina Montoya (who was also a Clinton Election Chairwoman for Texas as well as a Whitehouse Aid to Mr. Clinton, but was fired from the Whitehouse early in the Clinton first term for...? Whitewater? Travel-Gate? FBI files?) But the real stand-out at the three week long FCA trial in Dallas was a top aid of Senator Kay Baily Hutchinson; a tall, slim, nice looking woman with dark hair who always managed to let the jury see the large and impressive looking portfolio she carried with the large colorful seal of the U.S. SENATE on it (it was quite the gossip the first few days in the courtroom as to whom she was and worked for and I am sure the jury learned before me) while she carried on in the courtroom with the senior management from CSC's California offices and the defense attorneys Mr. Lynn and Melsheimer. I will point out that she never once came near me and I was treated as a pariah even by the Assistant U.S.A. Savers-McGovern who at one point during the trial verbally attacked my wife, Mary Jean Pearle, for only being there because she thouht she might get her hands on some money (about \$3 million and was never brought up at my 2002 trial or the fact that the U.S. Attorney had information about her and her families criminal activities) and my wife stated that she was there for my moral support (again, in total contridition of her testimoney in 2002. I guess she would have had a better opinion of me if I had won the \$3 million, but that wouldn't happen with the Judge asking me if I was a "paranoid" and the defense attacking me as "some kind of nut wrapping himself in the American Flag"(they hate us Marines))

Currently this same group of attorneys, plus former criminl court Judge David Finn, have been very busy for the past few years in Dallas providing "free legal defense" for a group of Dallas Police Officers charged with planting "FAKE-DRUGS" on unsuspecting citizens (mostly hispanic) and falsely arresting about 80 of these poor people. I mention this because in 1999 and 2000 I attempted tp prove that the U.S. Attorney, Paul Coggins, and the attorneys Mr. Lynn and Melsheimer had committed "criminal witness tampering" in the FCA federal fraud trial and was attempting to cover it up (Coggins and Melsheimer are now partners at Fisk & Richardson a Dallas law firm I suspect because the "bad cops" first went on federal trial before Judge Barbara Lynn, Mike Lynn's wife, and they didn't think it wise to defend these guys from Lynn, Melsheimer, et al. with the named partner's wife as Judge, but the affect was the same - not guilty - plus another coincidence, Barbara Lynn was appointed to the federal bench by Senator Kay Baily Hutchinson only a few weeks after the end of the 1998 FCA trial that Mr. Lynn and Mr. Melsheimer were voted "BEST DEFENSIVE WIN for 1998" in Ex Rel Battaglia vs. TDC, JV in the National Law Journal.) I had contacted the Ft. Worth, Texas office of the IRS-CID and found out my wife and her family had been under investigation for a number of criminal activities by the IRS-CID, but within a few months the investigation was supposed to have been turned over to the U.S.Secret Service (per IRS-CID Agent Bonnie Stone), but all I received were threats by Mary Jean Pearle to have me "killed" for talking to the IRS.

EXHIBIT #7.3

Mr. Hersh/Media Mail

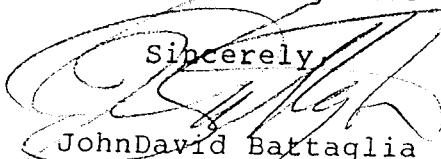
JDVD BATTAGLIA

Page 4 of 4

The threats on my life were followed with a Divorce Lawsuit, false charges of domestic violence, eviction from my home and after it was discovered that I had contacted the IRS-CID Agents (wire-tap on my CPA office phone) I was charged with first a false assault on X-mass day 1999 and during 2000 I was charged or filed on by my wife over 100 times with the Highland Park Police Department (later learned that Sgt. Katherine Justice of HP Police had a big "man-hating streak" and a predilection for mid-aged "Lipstick Lesbians" which is what my wife turned out to be or wanted to go back to after about five years of marriage - marriage is definitely not for the morally weak.) This discovery partially came about or was confirmed when the husband of another of these "Lipstick Lesbians" had hired off-duty police detectives to follow and video-tape his wife, Malisa Lowder, and wire-tap her telephone as well (this seems what rich people do for fun.) Please see my description in my April 21, 2005 letter to Dallas D.A. Bill Hill.

I realize that the amount of detail and the various parties in this conspiracy story are getting a little out of hand and I couldn't agree more, but when I was asked to view one of the video-tapes of Mr. Lowder's wife and my former wife (and a third older, but "butch-lebian") and asked to identify a man in the video which I did as an Assistant Dallas District Attorney I only knew a Bryan, I unfortunately became involved or knowledgeable of another conspiracy which I had no intention of being involved in: the participation of the Dallas District Attorneys Office in "SHAKING-DOWN" people it charged with crimes and threatened to prosecute and the receiving of "Kick-Backs" from Bonds posted by defendants and illegal referrals or "Kick-Backs" from ~~from~~ attorneys these defendants were steered to. Most of these "Shake-Down" and "Fake-Drug" victims were undocumented hispanics who in Dallas work and live in a vast underground economy - all dealing in cash - and this great source of cash must have been very tempting to these cops, attorneys and D.A.'s. And why it is so easy for some one like my former wives to solicit and obtain false criminal and prosecutions from Dallas police and District Attorneys.

I don't want to go into what happened to me and my girls, Faith & Liberty at this time, but it all came about because of me crossing these two groups of criminal actors hiding behind the Badges and Courts of the Law. I really only thought something like this could take place back east. I had been in Dallas for twenty years and never figured these nice, but slow folks as that devious. How wrong I was. If the "Klan" can still exist just below the surface in Dallas to this day, I recon I shouldn't be surprised by wide-spread corruption in ~~them~~ the police and the courts and the D.A.'s office, either, but this U.S. Senator Kay Baily Hutchinson and her Vinson & Elkins husband has really got me confused (Clinton-Liberal or Dallas and Highland Park "Klan-Conservative"?). Even if Paul Coggins was the U.S. Attorney for North Texas he couldn't have called-off or quashed a criminal investigation by both the IRS-CID and U.S. Secret Service, again, that is my guess, but someone did and my trial attorney, Mr. Paul Johnson and trial Judge Janice Warder were able to keep every item and piece of evidence I gathered and turned over to the IRS-CID hidden at my trial in 2002. I have even written the IRS Commissioner, Mark Everson, and his IG, but nothing. Not even a "FUCK YOU!"


 Sincerely

JohnDavid Battaglia

EXHIBIT #7.4

LEGAL MAIL

JOHNDavid BATTAGLIA
999412
3872 FM 350 South
Livingston, TX 77351

Page 1 of 2 pg's

June 28, 2005

Ms. Linda Acevedo
Assistant General Counsel
State Bar of Texas
P.O. Box 12487, Capital Station
Austin, TX 78711-2487

RE: Cause No. 74,348; John David Battaglia v. State of Texas

Dear Ms. Acevedo,

I was given your name and address as an attorney who might help Texas Death Row inmates with legal problems from the inter-net. In that regard I have been trying to obtain some information and documents relating to my trial which have been taken from my home by either the police or the Dallas District Attorneys at the time of my arrest in 2001. None of these documents were made available to my trial attorneys during my trial as I had requested for the cross-examination of the State's two primary witnesses against me.

Since my trial in 2002 both of my appointed appeal attorneys (Mr. Parks - Direct and Ms. Hemphill - Habeas Corpus) have refused to investigate any of my claims of misconduct by my appointed trial attorneys or have refused to assist me in locating or obtaining documentary evidence to support my claims for inclusion with my grounds for both the Direct Appeal and the State Habeas Appeal.

One of these grounds which my Direct Appeal Attorney refers to as "frivolous" and my Habeas Attorney has not included in that Application is the fact that my former wife, a Michelle Ward Ghetti, basically committed multiple acts of perjury while testifying on the witness stand for the State and that my trial attorney, Mr. Paul Johnson, stated to me that he refused to cross-examine her testimony because "he didn't want to get run out of town."

Prior to my arrest in 2001 I had in my possession various documents showing Michelle Ward Ghetti's prior acts of perjury including:

- ° a Certified Court Reporter's Hearing Transcript taken in front of Dallas County Family Court Judge Carolyn Wright (all attorneys refuse to obtain statements or testimony from Judge Wright or other witnesses present during atesting to Michelle Ward Ghetti's admitted, under oath, acts of submitting false documents to a court, perjury to a judge, and adultery during a contested divorce)
- ° two indictments for bankruptcy fraud in a Fort Worth federal court
- ° notes relating to her committing perjury in a Dallas Federal Bankruptcy Court and submitting to that court false corporation documents for a Diamond Lumber. Inc. which were used to defraud the bankrupts creditors of approximately \$1 million in pre-petition legal FEES PAID TO HER LAW FIRM, Akin, Gump, Strauss, Hauer & Feld

EXHIBIT # 8.1

LEGAL MAIL-Ms. Acevedo JDVD BATTAGLIA

Page 2 of 2 38/2

- a hand written diary I maintained through out my relationship with Michelle Ward Ghetti documenting such statements by her of:
 - a) attempting to hire someone in Louisiana to come to Texas to murder me for divorcing her and later getting her fired from her position as an attorney at Akin, Gump et al. in Dallas
 - b) having one of her former partners from Akin Gump, et al. provide her with false statements and affidavits which she in turn submitted to the State Bar in Louisiana in order to obtain a License to practice law in that state.
 - c) having her attorney, a Mr. John Barr, and a partner at her law firm, Akin Gump, et al., who was also a former federal judge, have me falsely arrested by the Dallas Sheriff, Mr. Bowles, and held in the Dallas County Jail for ten days until I agreed to pass on my right to have a trial in my filed divorce action from Michelle Ward Ghetti and agreed to not speak about her affairs with her partners at her firm and the fact that she and other firm attorneys had participated in the defrauding of the creditors of Diamond Lumber, Inc. of approximately \$1 million in illegal pre-petition payments by the bankrupt

I have previously written of some of the above acts by Michelle Ward Ghetti to the State Bar of Texas (Office of the Chief Disciplinary Counsel, A. Jaffe) on:

- June 18, 2004
- July 6, 2004
- July 20, 2004

and in the last letter asked the A. Jaffe to confirm to me in writing that Michelle Ward Ghetti was not an attorney in Texas and for the mailing address of the Louisiana Law Licensing Agency. To this day I have not received a written response from the State Bar of Texas. I had provided A. Jaffe with all of the names I was aware of Michelle Ward Ghetti possibly using while she was practicing law in Dallas, Texas during the years 1984 through 1987, which are the following:

- Michelle Ward or Michelle Renee Ward
- Michelle LaBorde or Michelle Renee LaBorde
- Michelle Clayton (married to a James Norman Clayton, III, attorney)
- Michelle Battaglia (used only to file fraudulent bankruptcy)
- Michelle Ghetti (used for teaching law at Southern University Law School in Baton Rouge, Louisiana)

I guess my first request of you, Ms. Aceydo, is can you confirm that the above Michelle Ward Ghetti was or was not a Licensed Attorney in the State of Texas during 1984 through 1987 as she represented to me and her law firm, Akin Gump, et al. While I was married to her?

In addition, I was wondering if you can provide me with copies of the three dated writings I made to the State Bar of Texas? I sent my other copies to the Texas Courts of Criminal Appeals and now realize that I should have filed them with my trial court judge, instead. I feel this is something I should do immediately, but the C.C.A. has refused all of my requests for copies of these and other writings I have submitted to the C.C.A. I didn't write the trial Judge Janice Warden since I had witnessed her openly assist my trial attorneys and the prosecutors rig the selection of the jurors for my trial during it's three months of voir dire and concluded she was too prejudiced towards me to be of any help. Thank you for your hel-

Ex#82

LEGAL MAIL

JOHNDavid BATTAGLIA
999412
3872 FM 350 South
Livingston, TX 77351

Page 1 of 2

July 7, 2005

Attorney General, Mr. Al Gonzales
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530

RE: Retaliation by DOJ and IRS employees for filing "Whistle-blower suit"

Dear Mr. Gonzales,

In 1995 I filed a FALSE CLAIMS ACT (FCA) or "whistle-blower's" lawsuit in federal court and with, then, Attorney General, Janet Reno, whose Justice Department elected to join and take over the prosecution of the lawsuit under Civil No. 3:95-CV-550-X. Just before and during the FCA trial in Judge Joe Kendall's federal court in Dallas, Texas, the U.S. Attorney threatened to take criminal actions against my wife and her family if I did not agree to change my testimony at the trial and make knowingly false statements about criminal acts by government employees.

After the FCA trial I began to realize the type and extent of the criminal activities the U.S. Attorney implied my wife and her family were involved in. I first contacted local police, but they took no action, so I then contacted Agents from the IRS Criminal Investigation Division (IRS-CID), who after several meetings with me said they were turning over their investigation of my wife and her family to the Secret Service because of the large amounts of cash involved in their transactions and because of my concern of illegal "witness tampering" and "provided protection" by the U.S. Attorneys Office.

These acts of contacting local and federal law enforcement agencies resulted in my receiving threats on my and my childrens lives as well as false police charges and arrests by local police agencies. All of which ended in the deaths of my daughters, FAITH & LIBERTY BATTAGLIA, and my near death at the hands of Dallas Police Officers, in total contradiction to their sworn statements and testimonys.

Mr. Gonzales, none of these events would have taken place if I had been provided protection from these threats by local and federal law enforcement as I had requested on a number of occasions during the years 2000 and 2001. Or if specific government employees of the DOJ, IRS and the FDIC/RTC were not retaliating against me for having first filed the original FCA lawsuit and subsequently trying to document and prove the illegal "witness tampering" and "providing of protection to criminal actors who assisted with the witness tampering" by the government attorneys and other attorneys involved in the filed FCA lawsuit and trial in Dallas, Texas.

copy

EXHIBIT #91

LEGAL MAIL/USAG

JDVD BATTAGLIA

Page 2 of 2

After my daughters deaths and my arrest in Dallas in May of 2001 it appeared the most important act of the local police and the district attorneys office was to find and retain all of my legal and investigative documentation relating to the above events, which included the FCA lawsuit and documents, the criminal activities of my wife and her family, which included public corruption by local law enforcement and elected judges in Dallas County and one federal INS Agent that I was aware of. In the past four years I have been beaten by police and jail gaurds, drugged by order of my appointed trial attorney and trial judge, threatened to be killed, starved to death, hanged in my jail cell, and even had my remaining daughter's life threatened, but during this same period of over four years I have been denied any and all access to any of the above referenced documents which were in my possession up until May of 2001 by the Dallas District Attorney (Brady Rule Violation), the IRS, and my appointed trial and state appeal attorneys.

I am enclosing some of my recent correspondence attempting to obtain these documents and legal assistance in order to present these facts and documents before the courts in Texas before the State of Texas is able to illegally execute me and therefore, cover-up the criminal acts of government and law enforcement employees.

As you will see from the enclosed I have written:

- ° IRS Commissioner Mark Everson and the IRS IG
- ° IRS Taxpayer Advocate Service
- ° U.S. Attorney-Investigator, Tom Hager, Fort Worth, Texas
- ° Texas State Bar; A. Jaffe and Linda Acevedo
- ° Dallas District Attorney, Mr. William "Bill" Hill
- ° Texas Court of Criminal Appeals and Dallas County Trial Judge
- ° Diocese of Dallas, Bishop Charles V. Grahmann
- ° The New Yorker, Mr. Seymour M. Hersh
- ° The Dallas Morning News, The Houston Cronicle and D Magizine

But none of these persons or government agencies appears willing to assist me or even provide me with copies of my own documents and filings to allow me to attempt to discover why and how my daughters, FAITH & LIBERTY died in Dallas, Texas, in May of 2001.

Therefore, I am asking you for your assistance Mr. Gonzales.

Sincerely,

JOHNDavid BATTAGLIA

cc: FBI Public Corruption
cc: Dallas County Court

EXHIBIT #9.2

LEGAL MAIL

JOHNDavid BATTAGLIA
999412
3872 FM 350 South
Livingston, TX 77351

Page 1 of 1

July 13, 2005

Attorney General of Texas
Mr. Abbott
P.O. Box 12548, Capital Station
Austin, TX 78711

RE: Unlicensed Attorney Practicing in the State of Texas

Dear Mr. Abbott:

I am trying to determine if a woman named, Michelle Ward (a.k.a. Michelle LaBorde, Michelle Clayton, Michelle Battaglia, and Michelle Ghetti) was ever a Licensed Attorney in the State of Texas or authorized to practice law in the State of Texas from the years 1984 through 1987. I was married to this woman from 1985 through 1987 and she represented to me as well as her law firm, Akin, Gump, Stuas, Haur and Feld in Dallas, Texas, as well as a number of Texas and Federal Judges and prosecutors that she was an "Officer of the Courts" and a Licensed Attorney in Texas.

I have written the State Bar of Texas on a number of dates (please see the enclosed letter dated June 28, 2005 to Assistant General Counsel, State Bar of Texas) and they have only written me that "records did not find attorney by name Michelle LaBorde (6/29/4)" and "unable to find an attorney by the name of Michelle Ghetti (7/9/4)." I do not know if the State Bar is giving me the "run-around" or if this Michelle Ward (also above aliasis) was never a Licensed Attorney in the State of Texas in the years 1984 to 1987. Would the Attorney General of Texas be able to determine if the above named woman was ever a Licensed Attorney in Texas during the period of 1984 and 1987 as she represented to me and her law firm, Akin Gump et. al, in Dallas, Texas ?

If I can provide any additional information please let me know and thank you for your assistance in determining the status of the above named attorney.

Sincerely,

JohnDavid Battaglia

cc:file

enclosed: Ltr-State Bar Texas-7/28/5 t 47a 47a/5 Hirsch, New York

EXHIBIT #10

LEGAL MAIL

JOHN DAVID BATTAGLIA
999412
3872 FM 350 South
Livingston, TX 77351

July 24, 2005

Honorable Judge Janice Warder
Criminal District Court
Frank Crowley Courts Bldg.
133 N. Industrial Blvd.
Dallas, Texas 75207-4399

RE: No. F01-52159-H, EX Parte John David Battaglia

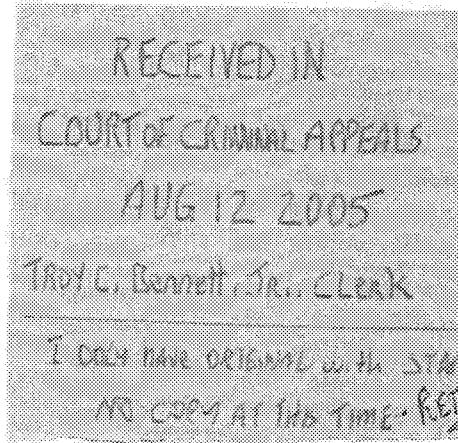
Dear Honorable Judge Warder:

I have recently found out through reading from the unit law library that "THERE IS A DUTY IMPOSED ON DEFENDANTS IN CRIMINAL CASES TO NOTIFY THE COURTS OF AN INADEQUACY IN THE ASSISTANCE OF COUNSEL." (Chapman v. U.S., 469 F.2d, page 635 (1972)) Please note that I have brought the following issues regarding the Inadequacy of Counsel: Mr. Paul Johnson and Mr. Paul Brauchle, to the attention of both my court appointed appeal attorneys: Mr. Douglas Parks and Ms. Jan Hemphill, with absolutely no response in over three years. As you will see from the enclosed writings I have also attempted to inform the Texas Court of Criminal Appeals, the Texas State Bar, the U.S. Attorney General, Mr. Gonzales, and just last week the Texas Attorney General, Mr. Abbott. (I would have enclosed copies of my writings to the C.C.A., but the two appointed appeal attorneys have refused my requests to obtain copies of these writings from the C.C.A. and the C.C.A. Court Clerk has refused to provide me with these copies as well. I also recently wrote the Texas State Bar requesting copies from them, but they replied last week that they have destroyed all of my writings to them with the attached letters to the C.C.A.)

Your Honor, during the time from my arrest in May 2001 until my trial in May 2002, my court appointed attorney, Mr. Paul Johnson, repeatedly told me he was not appointed to defend me, but to make sure all of the i's were dotted and t's crossed on my Death Sentence.

* When I first met Mr. Johnson in the jail I told him I thought I may had been drugged or poisoned just days or a week prior to my arrest because I had seen a doctor and had chemical tests just days before and I had marks from a rare drug reaction I had in the 1980's, in addition the day before my arrest a county probation officer I had never seen before (and a rather aggressive lesbian) had told me she was going to have me sent to jail because she knew I was going to fail a drug test I had not yet taken. At that meeting with Mr. Johnson I requested I be examined by a doctor and have blood and urine samples taken for toxicology testing and Mr. Johnson said he would arrange the examination, but under no circumstance was I to submit to the examination without his being present. When I was taken to be examined I told the doctor that I was instructed by my attorney, Mr. Johnson, to wait for his arrival, where upon the doctor stated that I refused any medical attention and had me sign a form which I could not read because of my injuries. Later

EXHIBIT #111



LEGAL MAIL/Judge Warden JDVD BATTAGLIA

Page 2 of 3

when I saw Mr. Johnson (weeks later) I asked him why he was not present for the medical examination like he said he would be and if I could still get an examination, where upon, Mr. Johnson said to me that noone in the jail or the whole county was going to lift a finger to help me, only see that I was put to death.

Your Honor, this first encounter with Mr. Johnson was very confusing and upsetting to me. I did not understand what had happened to my daughters the night of my arrest or why I was attacked and beaten and shot at by Dallas Police Officers or why I was stripped naked and kept in a cockroach infested cell for days only to be told periodically by sheriff and jail employees that they were going to beat me to death or help hang me in my cell. When I asked Mr. Johnson to file a complaint against the Dallas Police Officers who assaulted me on the night of my arrest Mr. Johnson refused. When I asked Mr. Johnson to schedule or file the following he refused:

- ° Bond Reduction Hearing
- ° Media Gag Order
- ° Change of Venue because of media
- ° Hearing regarding the above before the Judge
- ° Hearing for appointment of new trial counsel

After the last request was refused by Mr. Johnson I attempted to give a media interview where I tryed to relate to the News Reporter my treatment in the jail (refusal of medical attention) and my trial attorneys refusal to assist me in any way with my legal situation, other than telling me he was appointed to see I was put to death. After Mr. Johnson found out I had spoken to the media I was ordered to take a number of drugs, twice per day, and on a number of times I asked the jail employees who where forcing me to take the drugs (all other inmates were just handed their medications) who had said I was to take these drugs, they always responded that it was by order of the trial court judge and that it was a standing order that I was not to enter the courthouse unless I had been medicated.

I will point out your Honor that one of those drugs (there were 3 in all, I think) had a very profound effect on my physical and mental ability to function and speak. Almost all of my physical bodily functions were shut down for the six months I was given these drugs, but when I arrived here on Death Row, I was refused any medications and was told by the prison medical staff that I was just given the drugs to make me "look stupid during the trial and make me easy to control in the courtroom" and after a few tests the prison medical staff said there was nothing wrong with me to require any medication. This point your Honor would call into question all of the expert-witnesses called during my trial, plus the Constitutional issue of being drugged while in the courtroom against my consent as well as being placed in shackles, within view of the jury and having over four armed officers sitting within a few feet of me during the entire trial. I will also point out one of the rank-uniformed officers said to me on the first day of trial that if I moved or tryed to talk he would shoot me dead right there in the courtroom. I felt that was excessiv

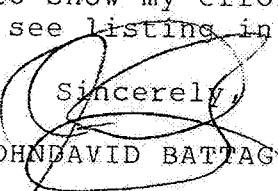
EXHIBIT #11.2

Case 3:09-cv-01904-B-BD Document 74 Filed 09/20/11 Page 52 of 69 PageID 660

When I wrote all of the above to my two appointed appeal attorneys, Mr. Parks and Ms. Hemphill, I never received a response except from Mr. Parks referring to my issues as "garbage" and "frivolous" and and when I related the above to a Ms. Schades, who was retained by Ms. Hemphill to assist with my Habeas Appeal, she stated she had spoken to Mr. Paul Brauchle and that he had stated that Mr. Johnson just had me medicated so he could control me in the courtroom, but after I received a copy of Ms. Hemphill's filed Writ of Habeas Corpus on my behalf I saw no mention of the being drugged as a grounds for relief, therefore I ask your Honor to Order Ms. Hemphill to modify or supplement the filed Writ of Habeas Corpus to include the following issues which are missing from the Writ:

- forced and involuntary medication/shackles visable to jury/misconduct during the jury selection by prosecutors and Mr. Johnson/Batson/Marshall.
- failure to give Warning pursuant to Estelle v. Smith, 101 S. Ct. (1981) prior to psychiatric examinations
- Mr. Johnson's (trial counsels) refusal to investigate and file complaint against Dallas Police for assault during my arrest and allowing perjury during trial by arresting police officer
- Mr. Johnson's refusal to cross-examine the state's witnesses and his statements to me for not cross-examining; "that he didn't want to get run out of town for saying anything bad about the witnesses", and when your Honor refused to let Mr. Johnson ask Ms. Pearle about a murder she had bragged about having committed for years (even to our Highland Park neighbors the Wilsons, but she and her parents characterized the victim as a 'nigger' and a 'wetback' to gain a certain social acceptance by these Highland Park people which resulted in Ms. Pearle being asked to join the Dallas Country Club, which she later turned down once she realized they were to investigate her and her parents background and were bound to find out that Ms. Pearle's representations about herself and her family were all false and that she and her family ran a rather large criminal enterprise in Dallas for years which included; prostitution, drug dealing and smuggling, the purchase and sale of stolen jewelry and antiques, as well as high volume money laundering, all with the apparent protection of the police and it seems the courts in Dallas) and Mr. Johnson said after you refused his "Proffer" or "Offer" of an 18 page Dallas Police Murder Report of a Mark Shwn Hutchins, "that your Honor would rule on nothing in my favor and risk not being re-elected to the ~~the~~ court." Mr. Parks refused to raise the recorded "Objection" or "Offer" in my State Direct Appeal.
- prosecutorial misconduct by the Dallas District Attorney for violation of Brady Rule in refusal to turn over my legal documents which showed criminal activities by certain Dallas D.A. employees and former employees (these are reflected in writings to the C.C.A.)

Your Honor, I hope I have provided this Notification in a manner that the court can read, understand, and act on. I will enclose a number of additional documents to show my efforts to gain my legal documents and legal advise (please see listing in July 7, 2005 to U.S.A.G. Gonzales)



Sincerely

JOHNDAVID BATTAGLIA

cc:file
cc:E.C.A.
cc:S.C.T.

EXHIBIT #113

LEGAL MAIL/Judge Warder JDVD BATTAGLIA

supplemental page

July 24, 2005

List of documents included in Notification To Courts OF An INADEQUACY
IN THE ASSISTANCE OF COUNSEL:

- * Attorney General (U.S.) Mr. Al Gonzales, July 7, 2005
- * Attorney General of Texas, Mr. Abbott, July 13, 2005
- * State Bar of Texas, Assistant General Counsel, June 28, 2005
- * Dallas District Attorney, Mr. William "Bill" Hill, April 21, 2005
- * The New Yorker, Mr. Seymour Hirsh, June 19, 2005
- * D Magazine, Mr. Wick Allison, February 24, 2005
(inclusive of 2003 and 2004 writings to the Diocese of Dallas)
- * U.S. Attorney-Investigator, Mr. Tommy "the shoe-shine-boy" Hager:
January 25, 2005, 9 pages
February 28, 2005, 2 pages
March 17, 2005, 1 page
(Note Mr. Hager's written response to me was "it was just bad luck
that me and my girls got caught up in some government employees
conspiracy")
- * Texas Court of Appeals and State Bar of Texas (no copies-refused)
June 18, 2004
July 6, 2004
July 20, 2004
September 9, 2004
November 1, 2004
- * Internal Revenue Service, Taxpayer Advocate Service, April 26, 2004
" " " " " , May 27, 2004
Reply to IRS, Tax Advocate by JDVD Battaglia, August 5, 2004
(numerous other writings to IRS and IRS Commissioner and IG, but
I had mailed all of my copies to appointed appeal attorneys Parks
and Hemphill and both have refused to acknowledge receipt of such
documentation or provide me with requested copies)

Note to Judge Warder or the Clerk of the Court: I do not have
enough copies of these attachments to send a full set to the
Texas Court of Criminal Appeal along with their carbon copy:
could the Court make a full copy to send to the C.C.A. for me?

Also I do not have enough copies to send multiple copies to the
Judge and the Court Clerk without substantially delaying the submission
of this writing and Notification, therefore, could the Judge or
Clerk of the Court send me back a confirmation of receipt of this
Notification and the attached documents or a copy? Also to App'tt Attorneys?

Thank you very much and if I need to send a fee, please let me know
how much I need to submit. Again, thank you for your assistance. JDVD

LEGAL MAIL

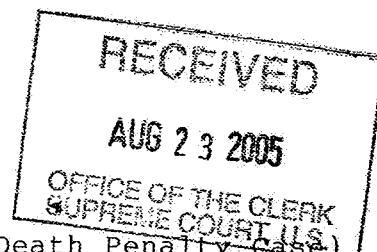
JOHNDavid BATTAGLIA
999412
3872 FM 350 South
Livingston, TX 77351

Page 1 of 15

August 12, 2005

Supreme Court Of The United States
Office of the Clerk
Washington, D.C. 20543

RE: John David Battaglia v. The State of Texas (Death Penalty Case)
Cause No. AP-74,348 (Texas Court of Criminal Appeals)



Dear Mr. Suter, Clerk of the Court:

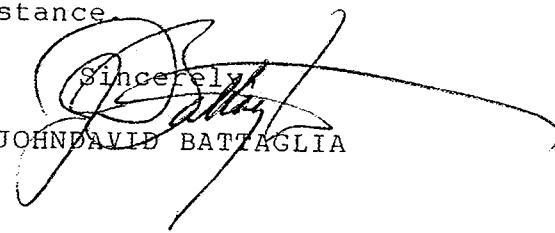
This Monday, August 8, 2005, I received written notice from my court appointed Direct Appeal attorney, Mr. Douglas H. Parks, that he would not file a Writ of Certiorari in the above referenced Texas Death Penalty Case after it was affirmed by the Court of Criminal Appeals on May 18, 2005. On May 21, 2005 and on June 18, 2005 Mr. Parks wrote me he would determine if any issues existed "over the next several days" and "the next few days," but had waited till the last moment to inform me he would not file the Writ. This is a situation I have experienced repeatedly with my Direct and Habeas Appeal attorneys appointed by the Dallas County Courts.

After reviewing Title 28, Rules of the Supreme Court of the United States, Rule 13, I realize that I am "out of time" to file a Writ on my own behalf or to ask for an extention of time to file such a Writ, but I do want to document for the Court my intention to have filed a Writ of Certiorari which would have raised issue with my arrest, trial, appointed trial attorneys and appointed appeal attorneys.

I have recently learned of my duty to inform the courts of an "INADEQUACY IN THE ASSISTANCE OF COUNSEL," (Chapman v. U.S., 469 F.2d (1972)) therefore, this writing. I have enclosed my recent notice to the trial court, Judge Warder, dated July 24, 2005, but after two weeks and two separate submissions to the trial court judge and the Texas Court of Criminal Appeals, I have failed to receive a response or even my requested "Stamped File Received" copies I submitted to the two Texas courts to acknowledge receipt.

In addition I am enclosing a copy of my July 7, 2005 writing to United States Attorney General, Mr. Gonzales, requesting assistance from the Department of Justice regarding actions by the trial judge and court appointed attorneys in Dallas, Texas.

Thank you for your assistance.


Sincerely,
JOHNDavid BATTAGLIA

cc: trial court
cc: Direct/Habeas
cc: file

EXHIBIT #12

LEGAL MAIL

JOHNDavid BATTAGLIA
999412
3872 FM 350 South
Livingston, Texas 77351

Page 1 of 4

August 29, 2005

Honorable Judge Janice Warder
Criminal District Court No. 1
Frank Crowley Courts Bldg.
133 N. Industrial Blvd.
Dallas, Texas 75207-4399

RE: FOI-52159-H(A), Ex Parte John David Battaglia**PRO SE ANSWER to State's Original Answer to Application for Writ
of Habeas Corpus in Death Penalty Case.**

Because of a total lack or break-down in communications between myself (Applicant) and my court appointed Habeas Corpus Appeal attorney, Ms. Hemphill, I am forced to try and answer the State's Original Answer in the best manner that I can. In the past three years I have attempted to communicate with both the Direct and Habeas Appeal attorneys and have been repeatedly refused any meaningful professional legal assistance, just as I had been refused any meaningful legal assistance prior to and during my trial by Mr. Paul Johnson.

I had even given a media interview on video from the Dallas jail to document my trail attorney, Mr. Johnson's, refusal to investigate, obtain evidence, or even help defend me from the charge of capital murder. I also tried to relate to the media my disclosures to Mr. Johnson the threats from Ms. Pearle and her family to have me and my children "killed" for having contacted the following law enforcement agencies regarding Ms. Pearle's criminal activities:

- * Highland Park Police; physical child abuse, illegal drugs, illegal immigrants, and interference with court ordered custody of my minor child from a previous marriage
- * Dallas Police; illegal drug dealing, receiving and selling stolen jewelry and antiques, burglary of my CPA office, and threats over the telephone and in person to have me "killed" for talking to the police and IRS about her criminal activities
- * INS Agent Angela Clay; illegal immigrants and money laundering
- * DEA; drug dealing and transportation between New York City and the use of my two daughters as cover or "mules" to carry drugs
- * IRS-CID and Secret Service; federal income tax fraud, money laundering, federal witness tampering, bribery of public officials, and threats to have me "killed" for disclosures to IRS-CID

In addition I had informed Mr. Johnson and both of the appointed Appeal attorneys, Parks and Hemphill, of the involvement of Dallas County and Federal Judges in the criminal activities of Ms. Pearle and her family. Those involved included Judge John Marshall, Judge Theo Bedard, Judge David Finn and Judge Joe Kendall. (I had also informed Mr. Johnson and the Appeal attorneys of the unethical or criminal activities by my former wife, Professor Michelle Ward LaBorde Chetti and Judge Harold Rntz, Judge Robert Francis then

PRO SE ANSWER 8/29/5

JDVD BATTAGLIA

Page 2 of 4

Assistant Dallas D.A. Bobby Francis), Sheriff Bowles, and her attorney John Barr and the fact that then Michelle LaBorder had been fired from her law firm, Akin Gump et al., for being indicted for two counts of federal bankruptcy fraud and/or both not being a licensed attorney in Texas as she had represented to her law firm and their clients, plus opening all partys to discovery since she had no legal priviledge.)

I had also informed Mr. Johnson that for a number of years I had witnessed a number of Dallas County Judges receive large sums of money at the home of my former attorney and brother-in-law, Robert M. Clark, Jr., with my wife, Ms. Pearle, and her mother, Dorrace Pearle, present also to witness the transactions. I had been told that the moneys were campaign contributions and holiday gifts to the Judges from the Pearle Family (of which I was a member), but after I had a trial in 1995 for carrying a weapon in my wife's car (UCW) and my wife, Ms. Pearle, committed perjury on the witness stand and I asked her why she had lied and not told the court that I was armed with a weapon because I was protecting over \$100,000 in cash and loose diamonds that were in her car when I was stopped by police and Ms. Pearle told me she committed the perjury at the direction of her brother, Mr. Clark, who was representing me at the trial, because he did not want the Judge at the trial to know that she and her mother, Dorrace Pearle, were involved in the buying and selling of diamonds from their Dallas Antique business. Later I learned from Ms. Pearle and an employee of a high-profile jeweler who was a client of my CPA practice that Ms. Pearle and the jeweler were involved in the buying and selling of stolen jewelry and money laundering in the millions of dollars and that she had been previously involved in prostitution and illegal drug businesses in Dallas since she was a teenage girl and high school drop-out. I also informed Mr. Johnson of my 1999 and 2000 contacts with IRS-CID Agent Bonnie Stone and Linda Sivley from the Fort Worth Office of the IRS and how Agent Stone had informed me of Ms. Pearle's investigation by the IRS and its being turned over to the U.S. Secret Service and when Ms. Pearle learned of these events (through illegal wire-taps) she said she would have me "killed" for talking to the IRS about her business.

Attorneys; Mr. Johnson, Mr. Parks and Ms. hemphill all have a conflict of interest with the above Judges and attorneys because they either represent clients in front of these Judges or are appointed by these Judges to represent clients before the courts or as in Ms. Hemphill's case actually sat on the bench as a Dallas County Judge and the fact that they are aware of Ms. Pearle and her families criminal activities and bribery of these public officials is apparent by their continued lack of or adequacy of representation of my interests at my trial and during my State Direct and Habeas Appeal processes. This "conflict of interest" and "affected inadequacy of representation" is similar to that established as a grounds for violation of my 14th Amendment Right and which can be relieved by grant of Habeas Corpus per CUYLER v Sullivan, 100 S. Ct. 1708 (1980) and undermines the proper functioning of the adversarial process so that my trial cannot be relied on as having produced a just result and protected my 6th Amendment rights per STRICKLAND v Washington, 104 S. Ct. 2052.

PRO SE ANSWER 8/29/5

JDVD BATTAGLIA

Page 3 of 4

I have previously attempted to inform the courts of these Inadequacies of Assistance of Counsels and Conflicts of Interests with Counsels with absolutely no response from either the trial court (wrote on February 4, 2004 and July 24, 2005) or the C.C.A (6/18/4, 7/6/4, 7/20/4, 9/9/4 and 11/1/4) per CHAPMAN v U.S., 469 F.2d page 635. On August 12, 2005 I wrote the Supreme Court of the United States to inform them of the INADEQUACY IN THE ASSISTANCE OF COUNSEL as well because Mr. Parks refused to file a Writ of Certiorari on my behalf and waited until less than 10 days of its due date to inform me of his intention not to file.

In addition I have copied both courts regarding an additional conflict of interest and prejudice by these appointed trial and appeal attorneys in my letter to Mr. Bill Hill, Dallas District Attorney, dated April 21, 2005, in which I attempted to outline the unethical and criminal activities of an attorney or attorneys under his offices supervision as well as other criminal acts committed in Dallas County including:

- * illegal wire-taps by police officers
- * criminal witness tampering by attorneys and police
- * false police reports and false public records and tampering with
- * corruption by public and elected officials

These acts, again, were disclosed to both my trial and appeal attorneys and their obvious conflicts of interests have kept them from bringing these facts forward for cross-examination, impeachment, motive, or even defense or mitigation, but they have all refused to impeach Ms. Pearle's purjured testimony and the only basis for the State's "probable cause" for its illegal warrantless search and seizure which the court allowed only because it refused to allow Ms. Pearle to be questioned or cross-examined regarding her own admitted "murder" or "killing" or any of the other illegal activities that the five law enforcement agencies have documentation of including the Dallas District Attorneys office. (One would wonder if Ms. Pearle has kept records of all the officials she has bribed, provided prostitutes, drugs, and stolen jewelry and antiques to.)

Also there was documentation of only about \$3 million of Ms. Pearle's illegal activities in my home in May of 2001 which was either taken or stolen by the police (Ms. Pearle's lesbian girlfriend, Highland Park Police Sergeant Kathrine Justice was given full access to my home by Dallas Police without any documentation of what she took or left) or the Dallas D.A. and has been illegally hidden from me in violation of the Brady Rule per BRADY v Maryland 373 U.S. 83 (1963), but my father and a Mr. John Zale, CPA were able to recover a folder containing all original documents which he made copies available to the Dallas Morning News and Mr. Johnson who, again, because of his conflict of interest hid the documents from me and refused to introduce them at trial to impeach the credibility and character of Ms. Pearle or even her motive to commit perjury or murder, again: Mr. Johnson has suppressed these documents as well as the prosecution and has failed to make them a part of my trial file in violation of work products doctrine and other ethical ABA Rules and Guidelines which he continually violated during my representation.

PRO SE ANSWER 8/29/5

JDVD BATTAGLIA

Page 4 of 4

In the State's Response to Grounds One they state a forfeited claim by failing to present it to a trial judge as an Objection, but trial counsel, Mr. Paul Brauchle, did raise an Objection during the jury selection when I pointed out to him the continuous signalling and head movements by the Judge (Warder) and the two prosecutors, Robinson and Kirlin, during the almost three months of jury selection (January 28, 2002 through April 5, 2002.)

I had observed Mr. Robinson and the court-reporter, Ms. Belton, signalling each others opinion of each prospective juror with a Post-It Note with a large dark majic-marker arrow either pointed up - to indicate their approval of the juror giving me the death-penalty - or the arrow pointed downward - indicating their disapproval of the juror giving me the death-penalty. I noted they would change the direction of their arrows as the questioning of the prospective juror progressed until a decision was made regarding to either, pass, strike or seat the juror. Ms. Belton placed her arrow on the front or face of her little typing machine away from the juror and Mr. Robinson placed his on the side of his table next to the defense table. At first I assumed the Judge could not see this activity, but then it became obvious that she was aware of it and was in turn signalling back with very slight movements of her head or what appeared as some type of body language (like the signalling between a baseball pitcher and his catcher, but much more subtle and less obvious.)

Then I began to notice that my trial counsel, Mr. Johnson, was also placing a Post-It Note on the side of the defense table, next to Mr. Robinson's table, but was keeping his hand over it so the juror wouldn't see the Post-It Note and sometimes he would place it on the side of a folder or soft drink bottle on the table (he sat at the opposite side of the table from me.) It appeared when they were all in agreement to the juror - all up arrows - the Judge would appear to be giving signals or body language to the juror who would sometimes pick up on the signalling or indication of which way he or she should answer the questions. Then I would watch the juror look from the Judge to the prosecutors for his signal as to how he was answering the questions and at one point you saw the Judge, the two prosecutors and Mr. Johnson all nodding their heads up and down in approval of the juror's answers.

When Mr. Brauchle finally understood what I was talking about he stood up and OBJECTED to the Judge and prosecution "bobble-heading the witness", but I am not sure if the practice and signals just became less obvious for me to discern. So the Objection to the misconduct during the jury selection was raised and the Direct Appeal attorney, Mr. Parks, (as if on cue himself) told me he couldn't raise the Batson or prejudicial Objection to the selection and questioning of the jurors because it was not reflected on the record "verbally." This is only a pretext for racial and ethnic discrimination which the State and more specifically Dallas is famous for in the recent MILLER-EL v Bretke 125 S. Ct. 2317 (2005). I lived in Dallas for 20 years and knew enough to never tell anyone I had Jewish blood and as soon as my wife turned on me and filed for divorce she told all of our Highland Park neighbors that I had hid that I was a Jew (which she knew) and was a "piggy" and a wop because I was Italian.

COPY
STAMP & RETURN
OS
EJ

JOHNDavid BATTAGLIA

999412

3872 FM 350 South

Livingston, Texas 77351

November 7, 2005

Page 1 of 2

Texas Court of Criminal Appeals
Clerk of the Court
P.O. Box 12308, Capital Station
Austin, Texas 78711

RECEIVED IN
COURT OF CRIMINAL APPEALS

NOV 08 2005

RE: Ex Parte John David Battaglia
Cause No. AP-74,384

Louise Pearson, Clerk

Dear Mr. Troy Bennett:

On November 5, 2005 I mailed you two copies of my PRO SE ANSWER TO STATE'S ORIGINAL ANSWER TO APPLICATION FOR WRIT OF HABEAS CORPUS IN DEATH PENALTY CASE, dated August 29, 2005, and requested you return one copy "STAMPED RECEIVED - C.C.A." to me, but I forgot to enclose the Stamped Self Addressed Envelope. Therefore, I am enclosing the S.A.S.E. for you to return my copy in.

During the year 2004 I had requested the C.C.A. to return copies of writings I had made to the Texas State Bar and Court inwhich I was attempting to NOTIFY the C.C.A. and State Bar of "Conflicts of Interest" and "Affected Inadequacy of Representations" by my court appointed trial and appeal attorneys. At the time of my writings I was not informed of the procedures for making a filing with the courts and receiving an acknowledgement in return. On August 23, 2005 I wrote the Texas State Law Library and requested these writings I mailed to the C.C.A. for review and documentation in my Cause File. To date I have not received a response from the State Law Library and the Texas State Bar on July 7, 2005 informed me in writing that they "destroyed all of my writings." Since the Nomination of Texas Attorney Ms. Miers to the Supreme Court last month I now am aware of the possible cause of a great deal of improper acts by the attorneys and Judges involved with my case and legal situations leading up to this case in Dallas in 2001.

EXHIBIT #14.1

C.C.A. - Mr. Bennett - 11/7/5 JDVD BATTAGLIA

Page 2 of 2

Therefore, I would like you to inform me how I may obtain those writings I made on:

- 1) June 18, 2004
- 2) July 6, 2004
- 3) July 20, 2004
- 4) September 9, 2004
- 5) November 1, 2004

or copies of these writings with proof that they were received by the C.C.A. and placed in my Cause File.

I am now aware that my Constitutional Due Process Rights have been violated not only by my court appointed trial attorneys but also by the court appointed appeal attorneys for both my Direct Appeal and my Habeas Corpus Appeal, as well as by the clear abuse of judicial discretion by the trial judge. The appointed attorneys all appear to have a "Conflict of Interest" with other attorneys, judges, and officials with the Dallas and Texas State Bar which has kept them from properly representing my interests at trial and during the appeal process. In addition I believe that my trial attorney, Mr. Paul Johnson, committed criminal acts of witness tampering and destruction of physical evidence related to my trial.

I want to make the above documents available to the U.S. Attorney General and the FBI office in Dallas as well as to prepare a complaint with the Texas Senate Committee on Criminal Justice and Jurisprudence. In addition I want to forward these documents to U.S. Senator Sam Brownback of the Senate Judiciary Committee whom I wrote to on October 20, 2005 about this particular issue and request his offices assistance in determining how Dallas Police and the Dallas District Attorneys Office was able to suppress federal law enforcement files relating to myself and my former wife, Ms. Pearle, and how also, my appointed trial attorney was also able to suppress these documents after they were already in his possession and before my trial.

Thank you for your assistance.

Sincerely,

EXHIBIT #14.2

JOHNDAYID BATTAGLIA

999412

3872 FM 350 South

Livingston, Texas 77351

November 13, 2005

Federal Bureau of Investigation
Dallas Division, Agent in Charge-Gonzalez
One Justice Way
Dallas, Texas 75220

RE July 7, 2005 Letter to Attorney General, Mr. Al Gonzales

Dear Agent in Charge - Gonzalez:

On August 12, 2005 I received a letter from Special Agent, Roderick Trimbach, of the Houston, Texas office of the FBI informing me that my July 7, 2005 letter and attached documents to U.S. Attorney General, Mr. Gonzales had been forwarded to the Dallas Division.

Since that date I have not heard from either the FBI, my court appointed attorneys or the Texas Courts regarding my request for assistance from Mr. Gonzales and the U.S. Department of Justice. Can you give me any indication as to whether the FBI will assist me in determining how and why physical evidence was either hidden or destroyed and witnesses tampered with and threatened by the Dallas District Attorneys Office and my court appointed trial and appeal attorneys in my Dallas Civil Divorce Proceedings, false criminal charges before Dallas Criminal Courts, witness tampering during my Federal False Claims Act (FCA) lawsuit in the Dallas Federal District Court, and during my Capital Murder Trial in the Dallas Criminal District Courts.

If the FBI and the Department of Justice will not assist me with determining why these criminal acts by various attorneys, judges and law enforcement agents will not be investigated and why I was falsely charged and convicted of Capital Murder and me and my two daughters were denied any protection of our basic CIVIL RIGHTS when I had repeatedly requested such protection from both local and federal law enforcement, then whom should I contact. Thank you.

Enclosed

EXHIBIT #15

LEGAL MAIL

JOHNDavid BATTAGLIA
999412
3872 FM 350 South
Livingston, Texas 77351

Page 1 of 2

August 22, 2006

Honorable Judge J. Cochran
Texas Court of Criminal Appeals
P.O. Box 12308, Capital Station
Austin, Texas 78711

**RE: Ex Patre John David Battaglia
Cause No. AP-74,384**

Dear Honorable Judge Cochran:

Because "THERE IS A DUTY IMPOSED ON DEFENDANTS IN CRIMINAL CASES TO NOTIFY THE COURTS OF AN INADEQUACY IN THE ASSISTANCE OF COUNSEL," per CHAPMAN v. U.S., 469 F.2d 634 (1972) I am writing your Honor to inform you as I have the trial court Judge Janice Warder and the C.C.A. through my prior filings or NOTICES with the C.C.A. court clerk that my trial attorneys Mr. Paul Johnson and Mr. Paul Brauchle as well as my Direct Appeal attorney, Mr. Douglas Park, and Habeas Corpus Appeal attorney, Ms. Jan E. Hemphill (all of which were appointed by the courts in Dallas and under which Rule of the C.C.P. or other governing documents all these attorneys have refused to provide me per my verbal and written requests) all have provided me at my trial and during this appeal process an "INADEQUACY OF COUNSEL" BECAUSE OF THEIR INDIVIDUAL AND COLLECTIVE ETHICAL AND CRIMINAL CONFLICT-OF-INTERESTS WITH OTHER Dallas attorneys, judges and attorneys employed by the Dallas District Attorneys Office as well as police officers and county probation officers employed by the cities in Dallas County and the County of Dallas itself. Because of this "STRUCTURAL DEFECT" in my trial and appeal due to this due-process violation I request that your Honor vacate the above conviction and sentence or reopen my DIRECT APPEAL and appoint new counsel to perfect an appeal in forma pauperis.

If your Honor would allow me to subpoena and depose IRS-CID AGENTS Bonnie Stone and Linda Syvie; the two Agents I met with in my CPA office in 1999 and 2000 when I reported the criminal witness tampering by the U.S. Attorney Paul Coggins and the trial attorneys Mr. Mike Lynn and Mr. Tom Milsheimer in a prior federal FALSE CLAIMS ACT (FCA) trial in front of Judge Joe Kendal in Dallas, Texas and who I provided over 500 pages of documents showing my then wife's (Mary Jean Pearle) criminal tax fraud and money laundering activity. When Ms. Pearle learned I had spoken to these IRS-CID AGENTS about her criminal activities and the involvement of her attorney/brother and his friend STATE DISTRICT JUDGE JOHN M. MARSHALL she repeatedly told me she would have me "killed like she did a boy named Mark Shawn Hutchin in her yard in 1982" and later again if I did not give back the originals of the documents I had given the IRS AGENTS along with an IRS FORM 211 which had her and Judge Marshall's name on it. My father gave these FORMS to Mr. Johnson in 2001 and he hid or destroyed them and the Dallas D.A. took other copies from my home and have hidden and suppressed in violation of BRADY RULE. Both AGENTS would testify to my contacts, provided documents and FORM 211 and the Dallas Police Archives Murder Report I faxed them in 2000.

EXHIBIT #6.1

4/23/2010

LEGAL MAIL/C.C.A./JUDGE COCRUN-JDVD BATTAGLIA

Page 2 of 2

Also the AGENTS could explain why after I had faxed the 18 page Dallas Police Archives Murder Report of Mr. Mark S. Hutchin and had asked for "protection from the threats on my life by Ms. Pearle" the AGENTS refused to responde in any manner, even after I left a number of voice messages and faxes (all this can be verified thru my CPA office telephone records, which Mr. Johnson and both the appeal attorneys have refused to try and obtain, just as they have refused to contact or dispose these two federal law enforcement agents who I directly asked for protection from, especially after they had told me my wife, Ms. Pearle, had been under criminal investigation before for prostitution and running prostitution businesses in Dallas for some number of years along with other members of her family and after I had shown attorney Brad K. Lollar in the Dallas Courthouse the just obtained Dallas Police Archives Murder Report of Mr. Hutchin, Mr. Lollar told me he knew of this murder when he was in the D.A.'s Office and that "the boy had been executed.")

Your Honor all of these appointed trial and appeal attorneys have demonstrated that they have only one objective in their representation of me in the above Cause No.: to hide and conceal the involvement of Texas District Judge John McCellan Marshall with Ms. Pearle's criminal enterprise and their attempts to violate both my children's and my own Constitutional Guaranteed CIVIL RIGHTS which resulted either directly or indirectly in my daughters, FAITH & LIBERTY BATTAGLIA's, deaths because of these criminal actors attempts to conceal their criminal conspiracy and whether they acted with INTENT (*mens rea*) or through TRANSFERRED INTENT caused their deaths.

I realize that the legal establishment down at the Dallas Courthouse wants to paint a totally different and false picture of myself and my former wife Ms. Pearle and her and her families involvement with both criminal activities in Dallas for more than four decades and their involvement (or paid protection) to elected Judges and appointed officials in Dallas and Dallas County. Therefor, I would request that if you appoint me new counsel that the attorney be from outside of the State of Texas or at least not from Dallas County and its surrounding counties because of Ms. Pearle and her families activity in East Texas which involve some rather unusual racist groups in those counties which have ties to older more established racist groups inside the wealthier areas of Preston Hollow in Dallas and Highland Park which are made up of the deacendants of the areas former KKK.

In addition I would request that any new attorney not be associated with any homosexual or lesbian groups from these area because a number of the police officers and the county probation officer and maybe some of the attorneys involved from the Dallas District Attorneys Office seem to have this deviant sexual tendency in common with Ms. Mary Jean Pearle as well as illegal drug usage which from my experience as a U.S. Marine NCO and EEOC trained federal manager; usually when concentrated in a small close-knit group can lead to more deviant and criminal behavior (which I've seen in SPADES in this case.)

Thank you for taking this NOTICE your Honor.

Sincerely,

JOHN W. BATTAGLIA

EXHIBIT #16.2

*John David Battaglia
999412
3872 FM 350 South
Livingston, TX 77351*

April 25, 2007

LEGAL MAIL

Attorney-at-law

RE: John David Battaglia v. Texas

Dear [Name]

第三卷

... I am sure you are aware that I am still waiting a hearing on my State Habeas Corpus Appeal and the issue of jury selection and ineffective assistance of counsel;.... I am aware that you were never present with him when he questioned me in the jail regarding either Judge John Marshall's involvement with the Pearle Family or Bradly K. Lollar's representation of me in my prior legal action with the Dallas D.A. and Ms. Laborde and Ms. Pearle or the fact that Ms. Laborde and Ms. Pearle both received "political assistance" in forcing me to settle both my civil divorce actions with them by bringing false criminal charges from the Dallas District Attorney Office.

I had told MR. ... that I had just became aware of this fact just prior to my MAY 2001 arrest when I had been told by Steve Lowder and University Police that Ms. Pearle and Ms. Lowder had been heard discussing on their telephones that they had a "friend" in the Highland Park Police Department and down at the courthouse. I had told Mr. ... how Mr. Lowder had me watch a police vidio of Ms. Pearle and Ms. Lowder passing a bag of drugs between a man and themselves and how he asked me if I could identify the man and when I asked why he explained that someone in the vidio was supposed to help Ms. Pearle and Ms. Lowder bring false criminal charges against him like they had previously done to me.

I identified the man as an Assistant D.A. I had met in Judge Finn's Court No. 10 in August 2000, but did not pay any attention to a third, but older woman who was very obviously only interested in Ms. Lowder in a sexual manner. I later realized this woman was Ms. Harriet Miers from her photos in the papers in October 2005. I think when I told Mr. Lollar about this vidio and D.A. in April 2001 he knew Ms. Miers was in the vidio as well since he and Mr. Jim Martin had pulled the same "fix" or "scam" on me in 1986/1987 with Ms. Laborde for her partners over at AKIN, GUMP, et al., and Mr.... knew as well because of his close relationship with Mr. Lollar. (note also both Laborde & Pearle were actively having Lesbian affairs or relationships while I was married to them & divorcing them) Can you offer any suggestions? Were you aware of Mr....'s conflict-of-interst with the above attorneys in 2001 and 2002?

ССИИ.С.

JOHN DAVID BATTAGLIA

EXHIBIT #17

JDVDBATTAGLIA.COM

999412

3872 FM 350 South
LIVINGSTON, TX 77351

September 17, 2007

MEDIA MAIL

Dallas Morning News-OP/ED
Ms. Keven Ann Willey
Box 655237
Dallas, TX 75265

RE: "STRUGGLING WITH JUSTICE" or COURT CASE FIXING RING ?

Dear Ms. Willey,

On September 15, 2007, Mr. Jones wrote of "inconvenient facts" regarding the death penalty and Lave's case on your VIEWPOINTS and opinion/blog. How about reporting some of these facts in your coverage of these "old cases", such as:

- Who was the Judge at trial
 - Who was the D.A. at trial (all three)
 - Who was the Defense Attorney at trial (1st & 2nd)
- or would those also be "inconvenient facts?"

Ms. Harriet Miers' and Mr. Al Gonzales' recent adventures to our nation's capital also hints at another "inconvenient fact" about our Dallas and Texas "Bar" and "system of justice" which might appear to be run as a very lucrative criminal enterprise by those who have sworn an oath to uphold our system of justice & U.S. CONSTITUTION. And like other criminal enterprises or KLANS or MOBS, it appears to have an "initiation rite" requirement to becoming a "made-member" of such groups, e.g. the sentencing to death of an innocent minority citizen on the command of a "made-member." Please report the facts and let us "readers" connect our own facts or dots.

On another topic you recently covered regarding the jails and D.A.'s in Texas recording "privileged legal communications"; would you ask Sheriff Valdez if she has recordings of my "client-attorney" and "doctor-client" interviews in the jail legal booths and meetingrooms (where jail guards were present with open-mikes on their walkie-talkies) and if they were given to the Dallas D.A.'s? I wrote the court and FBI on this issue on December 17, 2006 and copied the new D.A. Mr. Watkins in January of 2007, but have not heard back from anyone to date.

In addition I received a letter from U.S. Dept. of Treasury ref. my July 20, 2007 letter to U.S. Senator Grassley reg: Independent Counsel investigation of IRS Commissioner Everson and Ms. Miers for suppression of IRS-CID Investigation and my proffered IRS FORM 211 & FOIA. Your Mr. Steve Mogonical had a copy of my Form 211 in his hands as he read me off the names on the Form 211 and asked me questions in 2001 while we were on the Dallas County Jail telephones. Would you mail me a copy of my Form 211 or ask Sheriff Valdez or the D.A. for the recordings of our phone conversation and discussion of the FORM 211? and IRS-CID Agent Bonnie Stone whom Steve said he knew as well?

Sincerely,

EXHIBIT #18

5/10/2010

LEGAL MAIL

JOHNDavid BATTAGLIA
999412

Page 1 of 2

3872 FM 350 South
Livingston, TX 77351

February 4, 2008

Honorable Judge Robert Burns
Criminal District Court No. 1
Frank Crowley Court Bldg.
133 N. Industrial Blvd.
Dallas, Texas 75207-4399

RE: FOI-52159-H(A), Ex Parte John David Battaglia

Subject: Filed State Bar of Texas Grievance to Remove Ms. Hemphill

Dear Honorable Judge Burns:

On November 26, 2007 I wrote your Honor requesting you review and reconsider my February 2004 filed DECLARATION OF CONFLICT BETWEEN CLIENT AND ATTORNEY inwhich I asked for appointment of new appeal counsel, which Judge Warder denied on February 20, 2004. I have also requested of the Court of Criminal Appeals, "conflict-free counsel be appointed," in my August 22, 2006 letter to Judge Cochran.

As of this date I have not heard back from any court since the February 20, 2004 denial by Judge Warder and I have not heard back from any counsel since Ms. Hemphill notified me of her filing a Writ of Habeas Corpus with the trial court on February 16, 2005. I have repeatedly asked Ms. Hemphill to withdraw as my appointed counsel since I notified the courts in 2005 of the issues or grounds which Ms. Hemphill purposely omitted from my filed Writ.

Therefore, on January 22, 2008 I filed a Grievance Form with the State Bar of Texas asking that Ms. Jan E. Hemphill be removed as my court appointed counsel for the following reasons:

"1st, I believe, Ms. Jan E. Hemphill is not "LEGALLY QUALIFIED" to be my appointed counsel per the Texas Fair Defense Act of 2001 and per TX-CCP art. 11.071, as I have previously documented & stated in my "DECLARATION OF CONFLICT BETWEEN CLIENT AND ATTORNEY", filed with court on FEB 11, 2004 and in my letter dated NOV 26, 2007 with the new Judge (Burns) of the same court; that Ms. Hemphill is not a "QUALIFIED APPOINTED §11.071 HABEAS CORPUS APPEAL ATTORNEY" nor is she listed as one."

"2nd, I believe Ms. Hemphill was appointed as my attorney to continue a criminal "COVER-UP" and "OBSTRUCTION OF JUSTICE" by members of the Dallas Bar & Judiciary who I was personally knowledgeable of committing both criminal bribery and criminal and amoral sexual misconduct, including my former wife (attorney) Michelle Laborde Ghetti, who was vetted by the Dallas Bar Leadership to run for election as a Dallas Judge because of her witnessed conduct in committing these criminal and sexual acts by other members of the Dallas Bar Leadership while I was married to her during the 1980's, therefor, denying me "NON-CONFLICTED LEGAL COUNSEL" and my "RIGHTS TO LEGAL COUNSEL" per the Texas & U.S. Constitution, Amend 6, so as to conceal this criminal conduct by the Dallas Bar and members and their use of this practice to stack the Dallas Courts with Judges who will either "FIX" or "KIG"

?John Paul last 3Mth

EXHIBIT #19.1

4/23/2010

to: Judge Burns FEB 4,2008 FRM: JDVD SATTAGLIA Page 2 of 2 LEGAL

both Civil and Criminal Court Cases per the direction of these Bar members, as evidenced in both of my civil & criminal proceedings in Dallas Courts against both Ms. Michelle Laborde Ghetti (attorney in TX & LA) and Ms. Mary Jean Pearle and which have been concealed at my May 2002 capital murder trial by the Dallas D.A., and my court appointed trial attorneys, and subsequently by my appointed Direct and Habeas Corpus Appeal Attorneys, i.e., Ms. Jan E. Hemphill."

"please see the enclose filed documents with the Texas Courts regarding Ms. Hemphill's failure as my attorney to assist me or to communicate with me and to conceal the above conduct by the Dallas Bar and Judges."

"Texas Digest 2nd, Criminal Law §641.5(3)'...prejudice is presumed upon a showing of an actual conflict that adversely affected representation.' U.S.C.A. Const. Amend. 6"

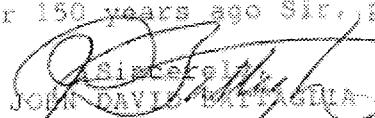
"per Acosta v. State, 233 SW3rd 349 (TCCA-2007)"...counsel "actively represented conflicting interests" and that conflict of interest adversely affected counsel's performance..." Jan E. Hemphill can not represent my interests when her loyalty and interests lay with her fellow Judges & Attorneys of the Dallas Bar (Judge of Court No. 1)." #44*

"The Dallas Courts Continuing PATTERN of appointing INEFFECTIVE COUNSEL EVERY STEP OF THE CRIMINAL AND APPEAL PROCESS is further evidence of a continuing pattern of RACIAL and ETHNIC DISCRIMINATION by the Dallas Bar & Judiciary and is condoned by the TEXAS STATE BAR by its lack of oversight & sence of justice.RUIZ v Quarter,504 P3d 523"

Your Honor, these grounds I have related in my Texas State Bar Grievance Form should have been addressed prior to my trial in 2002, but my appointed trial counsel, Mr. Paul Johnson, and the trial judge kept me from getting legal help by first "blackmailing" my friends and my father (with the direct assistance of the Dallas District Attorneys Office) then after that with threats on my daughter's life and finally by forcibly medicating me in the Dallas County Jail for over six months with anti-psychotic and other psychotropic drugs; first in an attempt to get me to commit suicide while in the Dallas Jail (a specialty of theirs & then at TDCJ) and second to render me incapable to "thought or speech" so as to disallow me my right to "FREE-SPEECH" and my ability to defend myself before and at trial.

If your Honor continues to ignore my requests for new appointed counsel as the prior judge had for over five years; I will have to assume your Honor's loyalties and interests also lie with those in the Dallas Bar and District Attorney Office, and therefore, request that your Honor "recuse" yourself from this case because of your "conflict of interest."

Your Honor I request "conflict free counsel and judge" and that this pattern of "judicial discrimination" stop in Dallas with this case. The public is wise to why California executed 10 men since reinstating the death-penalty and Texas executed over 400 in the same period: a Texas Judiciary blind to the rule of law and U.S. Constitution. The South lost the war over 150 years ago Sir, please join the Union.


Sincerely,
JOHN DAVID SATTAGLIA

cc: C.C.A.

bc: Dallas D.A., Craig Watkins

Re: ACLU, Brian W. Stull (attorney)

EXHIBIT #19.2

4/23/2010

JOHN DAVID BATTAGLIA
999412
3872 FM 350 South
Livingston, TX 77351

September 15, 2011

LEGAL MAIL

U.S. District Court
Northern District of Texas-Dallas Division
1100 Commerce
Dallas, TX 75242

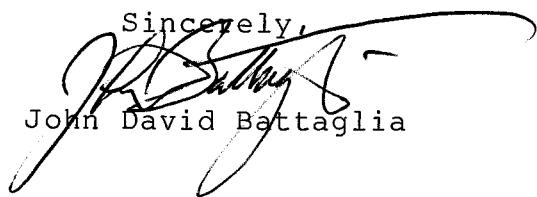
**RE: CASE 3-09-CV-1904-B; JOHN DAVID BATTAGLIA v. THALER, TDCJ
(Texas Capital Case)**

Dear Clerk of the U.S. District Court:

Would you please file with the Court in the above-referenced Cause, the enclosed original and one judge's carbon copy with the attached EXHIBITS, my PRO SE SUPPLEMENTAL REPLY.

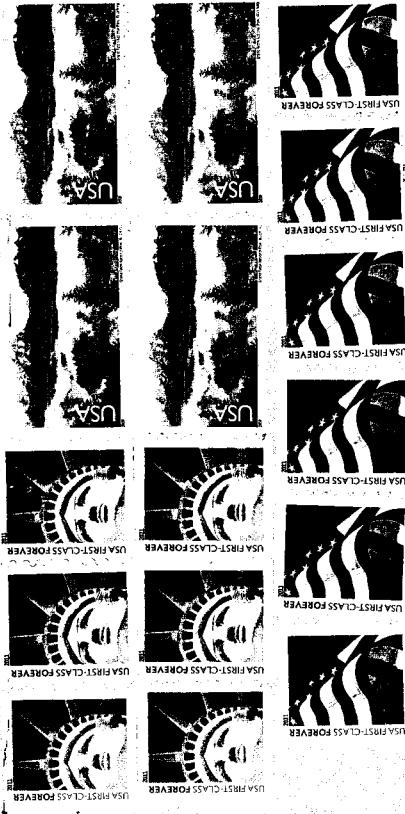
I have also enclosed an additional first page carbon copy of the the REPLY to be stamped by the Court as FILED & DATED and returned to me in the enclosed stamped self addresses envelope to my above address.

I thank the Clerk of the Court for your assistance in filing the original and judge's carbon copy with two sets of Exhibits of my Pro Se Supplemental Reply and for returning the STAMPED COPY to me in the enclosed envelope.

Sincerely,

John David Battaglia

cc: Mr. Dryden-Texas A.G. Office
cc: file

JOHN D. BATTAGLIA - 999412
Polunsky Unit
3872 FM 350 South
Livingston, TX 77351



U.S. DISTRICT Court
NORTHERN DISTRICT of TEXAS
DALLAS DIVISION
1100 Commerce Street
DALLAS, TX 75242



LEGAL MAIL